

Lex Parliamentaria ;
OR, A
TREATISE
OF THE
LAW and CUSTOM
OF THE
PARLIAMENTS
OF
England.

By G. P. Esq;

With an
APPENDIX of a Case in Par-
liament between Sir *Francis Good-*
wyn and Sir *John Fortescue*, for the
Knights Place for the County of
Bucks, 1 Jac. 1.

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T O T H E
Most Supreme Court
O F T H E
K I N G D O M,
T H E
P A R L I A M E N T
O F
England :

The A U T H O R doth
most humbly De-
dicate this his
small Treatise of
the L A W and
C U S T O M of P A R -
L I A M E N T.

A 2

T H E

1509/1986



THE
PREFACE
TO THE
READER.

I *Am very sensible, that as soon as this Treatise is submitted to publick View, 'twill likewise meet with publick Censure, and not a Few will be apt to start this Objection against it, that it is only like an Old Piece in a New Dress. These Things, men will say, have been done before ; the same Matter , and much of the same Form, are to be found in other Writers, and this is but to obtrude upon the World a vain Repetition of other mens Observations. I must confess, in part, it is so, and it must needs be so, for*

The PREFACE

it is not to be expected, that I shou'd presume to dictate Rules and Directions out of my own Fancy, by which to govern or Influence Parliaments: I must be beholding to Precedents and Records: and tho' you shall find many of the same Notes scattered in my Lord Coke, in Elsyng, Hakewel, Scobel, and others; yet I may adventure to say, you shall nowhere meet them couched in so compendious, and so useful a Method.

I have not only cull'd out of the before-mention'd, and several other Authors, what is proper and pertinent to this Design; but I have gleaned from the Statutes, Law-Books, Reports, and Histories whatsoever I met with in my inquisitive Re-searches, beyond All that has been before placed in any Collection, and which may be applicable to this Undertaking.

All Members ought to be thoroughly skill'd in Parliamentary Affairs, to know their own Laws and Customs, their Powers and Priviledges, that they

to the Reader.

they may not at any time suffer Invasions to be made upon them, by what plausible Pretences soever: but as it is impossible for men of the most tenacious Faculties to keep all things constantly in their minds, therefore this is to ease and refresh their Memories in case of any Forgetfulness, and they may with a very little Trouble have always this in their Pockets, which perhaps some may not be able without a great deal of Trouble to carry always in their Heads.

When he that is conversant in Study and Books, cannot carry a Library about him; he may easily recollect what is expedient for him, from the Supplement of this Epitome. Such as shall hereafter be promoted to that honourable Station of being Senators of the Kingdom, will find it much more easie to receive short Information from this little Manual; than to be obliged on every Occasion to consult the publick Records, and turn over wearisome

The PREFACE, &c.

some Volumes. And they who do not expect Admission into a Parliament House, will yet receive this as no unprofitable Diversion, to observe and know the admirable method of Parliamentary Proceedings; the Exactness and Decency of their Orders; the Wisdom and Prudence of their Customs; the Extent of their Powers, and the Largeness of their Priviledges.

Wherefore, without any Flattering, or Arrogance to my self, I shall make bold to tell you, I am verily perswaded that what I have taken pains to collect from several Books, and to digest into this small Compass, for my own Convenience and Information, will conduce to the general Satisfaction of all that read it; which was one main Reason that induced me to publish it.

THE

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The Parliament.

IT is called *Parliamentum*, because every Member of that Court shou'd *parler le ment*, speak his mind.

Mr. *Lambard* in his *Archion* maintains, That the *Parliament* was used in the *Saxons* time, and then consisted of the *King*, *Lords*, and *Commons*; as in the Time of King *Ina*, *Ann.* 712.

Mr. *Prinn* says, by all the ancient Precedents before the Conquest, it is most apparent, That all our primitive Synods and Councils were nought else but *Parliaments*: That our *Kings*, *Nobles*, *Senators*, *Aldermen*, *Wisemen*, *Knights*, and *Commons* were usually present, and voting in them as Members, and Judges.

Co. sup. Lit.
tation, 110.

Sir R. Ar-
kyns Ar-
gument,
c. p. 18.

Mr. Pryn's
Truth tri-
umphing
over Fals-
hood, An-
tiquity o-
ver Novel-
ry, fol. 69.
Pryn's An-
cient
Right, c.
p. 68.

B

They

Id. 98, 99.

They had many Expressions and Phrases (as, *Omnes Regni Nobiles, Totius Regni Magnates, Proceres & Fideles Regni, Universitas Regni, Clerus & Populus, Communitas Regni, Discretio totius Regni, Generale Concilium Regni*, and many more) varying in several Ages, till at last they fixed on the word, *Parliamentum*.

Vide many Records and Precedents touching this Matter in the Appendix to Petyt's *Miscellanea Parliamentaria*.

Crompton's
Juris. p. 1.

This Court is the highest Court of *England*, in which the Prince himself sits in Person, and comes there at the Beginning of the *Parliament*, and at the End, and at any other Time when he pleaseth, during the *Parliament*.

Sir Tho.
Smith's
Common-
wealth, 74.

The Judges in *Parliament* are the King or Queen, the Lords Temporal and Spiritual, the Commons represented by the Knights and Burgeses of every Shire, and Borough-Town. These all, or the greater Part of them, and that with the Consent
of

Parliament.

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of the Prince for the time being ,
must agree to the making of Laws.

The *King of England*, neither by *Fortescue*,
himself, or his Ministers, imposeth *c.36. p.84.*
Tallages, or any other Burdens on *b.*
his Subjects, or alter their Laws, or
make new Laws, without Assent of
the whole Kingdom in *Parliament*.

No Parliament, no Penny, hath *Turner's*
been always taken notice of as a *Cafe of*
principal Foundation of this Go- *Bankers,*
vernment, even by our Neighbour *95.*
Princes and States who have in all
Ages made their Approaches upon
this Realm, and evermore valued us
in Proportion to the Corresponden-
cy they observed between our Kings
and their Parliaments. For (seeing
the Power of every Prince is com-
puted from his Treasure and Marti-
al Men, and those again by the Love
of his People) they well enough
knew, that as long as a good Un-
derstanding was maintain'd there,
our Princes could never want the
Sinews, either of the Purse, or of
valiant mens Arms.

Finch's
NOMOTEXVIA,
lib. 2. C. I.
fo. 21. b.

L'Assemblée de Troys Estates, Cestascavoir, Roy, Nobility, & Commons, qui font le Corps del Realm, est appel un Parliament, & leur Decree, un Act de Parliament; Car sans tous troys (come si soit fait per Roy & Seigneurs, mes rien parle del Commons) nest Ascun Act de Parliament: i. e. The Assembly of the three Estates, to wit, the King, the Nobility, and the Commons, which make the Body of the Realm, is called a Parliament, and their Decree an Act of Parliament; for without all three (as if it be done by the King and Lords, but speaks nothing of the Commons) there is not any Act of Parliament.

The word *Parliament* is used in a double sense.

English
Liberties,
p. 78.

1. Strictly, as it includes the *Legislative Power of England*, as when we say---an *Act of Parliament*; and in this Acceptation it necessarily includes the *King*, the *Lords*, and the *Commons*, each of which

which have a *Negative Voice* in making Laws, and without their *Joint Consent* no new Laws can pass, that be obligatory to the Subject.

2. Vulgarly, the Word is used for the *two Houses*, the *Lords* and *Commons*; as when we say, The *King* will call a *Parliament*; his Majesty has dissolved his *Parliament*, &c.

This Court consists of the *King's* ^{s 4 Inst. 1.} Majesty, sitting there as in his Royal Politic Capacity, and of the three Estates of the Realm, viz. the *Lords Spiritual*, *Arch-Bishops*, and *Bishops*, (who sit there by Succession in respect of their Counties, or Baronies, parcel of their Bishopricks) The *Lords Temporal*, *Dukes*, *Marquesses*, *Earls*, *Viscounts*, and *Barons*, who sit there by reason of their Dignities, which they hold by Discent, or Creation, (every one of which, both Spiritual and Temporal, ought to have a Writ of Summons, *ex debito Justitiæ*)

And the *Commons of the Realm*, whereof there be *Knights of Shires*, or *Counties*, *Citizens of Cities*, and *Burgesses of Boroughs*; all which are respectively elected by the *Shires*, or *Counties*, *Cities*, and *Boroughs*, by force of the *King's Writ*, *ex Debito Justitiæ*, and none of them ought to be omitted: and these represent all the *Commons* of the whole *Realm*, and are trusted for them.

Id. 2.

The *King*, and these three *Estates* are the great *Corporation* or *Body Politic* of the *Kingdom*, and do sit in two *Houses*: the *King* and *Lords* in one *House*, called *The Lords House*; the *Knights*, *Citizens*, and *Burgesses* in another *House*, called *The House of Commons*.

Arc. Parl.
2.

That which is done by this *Consent*, is called *firm*, *stable*, and *sanctam*; and is taken for *Law*.

Townsh. Col-
lect. 5, 6.
Vid. Cromp-
ton 1. b.

All the *Judges* of the *Realm*, *Barons* of the *Exchequer*, of the *Coif*, the *King's Learned Council*, and

Parliament.

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and the *Civilians*, *Masters* of the *Chancery*, are called to give their Assistance and Attendance in the Upper House of *Parliament*: but they have no Voices in *Parliament*, 4 *Inst.* 4. But are made sometimes joynt Committees with the Lords.

Every English-man is intended to be there present (either in Person, or Procuration, and Attorney) of what Pre-eminence, State, Dignity, or Quality soever he be; from the *Prince* (be it *King*, or *Queen*) to the lowest Person in *England*. And the Consent of the *Parliament* is taken to be every man's Consent. Arc. Parl. 3.
Smyth's
Common-
wealth 74

No man ought to sit in the High Court of *Parliament*, but he that hath Right to sit there: for it is not only a personal Offence in him that sitteth there without Authority, but a public Offence to the Court of *Parliament*, and consequently to the whole Realm. 4 *Inst.* 45.
82. b1

It is to be observed, That when there is best Appearance, there is

the best Success in *Parliament*. At a *Parliament* 7 *Hen.5.* of the *Lords Spiritual* and *Temporal*, there appeared but Thirty, and there was but one Act pass't, of no great weight. In 50 *Ed.3.* all the *Lords* appeared in Person, and not one by Proxy; and so many excellent Things were done, that it was called *Bonum Parliamentum*.

Id.6.

At the Return of the Writs the *Parliament* cannot begin, but by the Royal Presence of the *King*, either in Person, or Representation.

Id.7.

The *King's* Person may be represented by Commission under the Great Seal to certain *Lords* in *Parliament*, authorizing them to begin the *Parliament*, or to prorogue it, &c.

Id.28.

When a *Parliament* is call'd, and doth sit, and is dissolved, without any Act of *Parliament* passed, or Judgment given, it is no *Session* of *Parliament*, but a *Convention*.

Id.32.

It is an Observation proved by a great Number of Precedents, that
never

Parliament.

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never any good Bill was preferred, or good Motion made in *Parliament* (whereof any Memorial was made in the Journal-Book, or otherwise :) Tho' sometimes it succeeded not at the first, yet it hath never dy'd, but at one Time, or other, hath taken effect.

Matters of *Parliament* are not to be ruled by the Common-Law. Id. 17.

If Offences done in *Parliament* might have been punish'd elsewhere, it shall be intended, that at some Time it would have been put in Ure. Ibid. Vid. 1 Inst. §. 108.

It doth not belong to the *Judges* to judge of any Law, Custom, or Priviledge of *Parliament*. Id. 30.

It is the just and constant Course of *Parliament* to bring the Party accused to his Answer: yea, tho' he fly Justice, yet to send out Proclamation into the Countries, that he appear at a Day, or else such and such Judgments shall be given against him. Seld. Judic. 95.

What is done by either House,

ac-

Sir R. At-
kins Ar-
gument,
6c. 14.

According to the Law and Usage of *Parliament*, is properly, and in the Judgment of the Law, the Act of the whole *Parliament*: and what concerns the one, must of necessity concern the whole; not meerly by Consequence, but by an immediate Concernment, as being one and entire.

Id. 34, 41,

51, 55

The three Estates of *Parliament* are one entire Body, and Corporation: all their Powers and Privileges in the Right of them, and in the Title to them, are entire, *per my & per tout*, and belonging to the whole Body of the *Parliament*; tho' in the Exercise of those Powers, and sometime in the Claim of them, they are distinguish'd; and in the Practise of their Powers, they are in many Things distributed into Parts.

Ibid.

All the Estates in *Parliament* are all call'd by one common Name, as *Commune Concilium Regni*, *Magna Curia*, they are one Body Politic. It is said by *Fineux* Chief Justice,

Justice, *That the Parliament at the Common-Law consists of the King, Lords, and Commons, and they are but one Body Corporate.*

The Liberties and Franchises of ^{Id. 55.} the *Parliament*, in the Right of them, are entire, and due to both Houses, for both make up the *Parliament*.

Knyghton (one of our best Hi-^{Knyghton}storians) doth notably disclose the ^{de Eventibus Anglia,} ancient ends of calling *Parliaments*, ^{l. 5. f. 2681.} in saying, *Quod ex Antiquo Statuto, & Consuetudine laudabili & approbata, &c.* That by an ancient ^{Col. 1, 2.} Statute, and Custome laudable and ^{Petty's Rights, &c. in Pref. p. 43, 44} approved, which no man could deny, the *King* was once in the year to convene his *Lords* and *Commons* to his Court of *Parliament*, as to the highest Court in the whole Realm, [*In qua omnis Equitas relucere deberet absque qualibet Scrupulositate vel nota; tanquam Sol in Ascensu Meridiei; ubi Pauperes & Divites pro Refrigerio Tranquillitatis & Pacis, & Repulsione Injuriarum,*

rum, Refugium Infallibile quærere possent, ac etiam Errata Regni reformare, & de Statu & Gubernatione Regis & Regni cum Sapientiori Concilio tractare; ut Inimici Regis & Regni Intrinseci; & Hostes Extrinseci destruantur & repellantur, qualiterquoque Onera incumbentia Regi & Regno levius ad Eandem Communitatis Supportari potuerunt.] i. e. In which Court all Equity ought to shine forth without the least Cloud or Shadow, like the Sun in its Meridian Glory; where Poor and Rich, refreshed with Peace and Ease of their Oppressions, may always find infallible and sure Refuge and Succour; the Grievances of the Kingdom redressed, and the state of the King and Government of the Realm debated with wiser Counsels; the Domestick and Foreign Enemies of the King and Kingdom destroy'd and repelled, and to consider how the Charges and Burthens of both may be sustained with

with more Ease to the People.

The *House of Lords* cannot exercise any Power, as an House of *Parliament*, or as a Court for Errors, without the *House of Commons* be in Being at the same Time. Both Houses must be prorogued together, and dissolved together.

By the Law, *Parliaments* ought to be very frequent. Before the Conquest (as it is untruly call'd) by the Law, *Parliaments* were to be held twice a year, as appears by King *Edgar's* Laws. So it was ordained by King *Alfred*. By the Stat. of 4 *Ed. 3. c. 14.* *Parliaments* ought to be once a year, and oftner, if need be. And in 36 *Ed. 3. c. 10.* to be once a year, without Restriction, if need be. By 16 *Car. 2. c. 1.* these Acts are declared to be in Force: and further it is declared and enacted, *That the holding of Parliaments shall not be discontinued above three years at the most.*

The *Parliament* is a Court of very great Honour and Justice, which

Sir R. At-
kin's Argu-
ment, f. 51.

Id. 59.

Id.

Plow.

Com 298.

which no man ought to imagine a Thing dishonourable.

Sir R. At-
kins Arg.
60.

An Offence committed in *Parliament* is a very high Offence; but the higher it is, the more proper it is for their Judicature; and that Court is arm'd with a Power to punish the highest Offences, and the highest Offenders.

Ibid.

A *Parliament* may err, for they are not infallible; but the Law hath provided a Remedy against those Errors, and a way to reform them. A subsequent *Parliament* may reform the Errors of a preceding *Parliament*.

Ibid.

But to say that they will be Partial, or Unjust, or Corrupt, or do any Thing out of Malice, is to raise a Scandal upon the whole Nation, whose Representative they are.

Ibid.

If any Offence whatever be committed in the *Parliament* by any particular Members; it is an high Infringment of the Right and Priviledge of *Parliament*, for any Person

Person, or Court, to take the least Notice of it, till the House it self either has punish'd the Offender, or referred them to a due, or proper Course of Punishment. To do otherwise, would be to make the Highest Court an Offender, and to charge them with Injustice.

Their Right and Priviledge so far extends, that not only what is done in the very House, sitting the *Parliament*; but whatever is done relating to them, or in pursuance of their Order, during the *Parliament*, is no where else to be punish'd, but by Themselves, or a succeeding *Parliament*, tho' done out of the House.

Either House doth ever for the most part shew it self so careful to keep firm Correspondence with the other, as that when a Bill hath pass't either of the said Houses, and is sent to the other, it doth for the most part pass, and is neither dash'd, nor alter'd, without very great Cause upon mature deliberation,

Sir Simon
d'Ewes
Journal,
186.

tion, and usually also not without Conference desir'd, and had thereupon ; that so full Satisfaction may be given to that House, from which the Bill so rejected, or alter'd, was sent.

Preface to
Petyr's
Miscel.
Parlemen-
tar.

Pessima Gens humani Generis always abhorr'd a *Parliament* : and the reason thereof is demonstrative ; because they all knew they shou'd then be call'd to an impartial and strict Account, and be punish'd according to their Demerits.

Ibid.

It was said by the Lord *Bacon* to Sir *Lionel Cranfeild*, newly made Lord Treasurer, That he would recommend to his Lordship, and in him to all other great Officers of the Crown, one considerable Rule to be carefully observ'd, which was, *Remember, a Parliament will come.*

Petyr's Miscel.
Parliament. 9.
Vid. Cromp.
Jur. 10.

The *King* at no Time stands so highly in his Estate Royal, as in the Time of *Parliament* ; wherein the *King* as Head, and they as Members,

Members, are conjoyn'd and knit together into one Body Politic: so as whatsoever Injury (during that Time) is offer'd to the meanest Members of the House, is to be judged as done against the *King's* Person, and the whole Court of *Parliament*.

The Prerogative of *Parliament* ^{Ibid.} is so great, That all Acts and Processes coming out of any inferior Courts, must cease, and give place to the highest.

Statutes in *England* are made not ^{Fortescue 40. a.} only by the Princes Pleasure, but also by Assent of the whole Realm: so that of Necessity they must procure the Wealth of the People, and in no wise tend to their hindrance.

It cannot otherwise be thought, ^{Ibid.} but that they are replenish'd with much Wit and Wisdom, seeing they are ordain'd, not by the Device of one man alone, or of a hundred wise Counsellors only, but of *five hundred and odd Men that ought to be freely Elected by the People.*

C H A P. II.

Power of Parliament.

Sir Tho.
Smith's
Common-
wealth, l. 2.
c. 2. p. 72.
Arcana
Parl. 1.

TH E most High and Absolute Power of the Realm of *England*, consisteth in the *Parliament*. For as in War, where the *King* himself in person, the *Nobility*, the rest of the *Gentility*, and the *Teomanry* are, is the Force and Power of *England*: So in Peace and Consultation, where the Prince is to give Life, and the last and highest Commandment, the *Barony* or *Nobility* for the higher; the *Knights*, *Esquires*, *Gentlemen* and *Commons* for the lower part of the *Commonwealth*; the *Bishops* for the *Clergy* be present to advertise, consult and shew what is good and necessary for the *Commonwealth*, and to consult together; and upon mature deliberation; every Bill or Law being thrice read and disputed in either House, the other two parts, first each a part, and after

after the Prince himself in presence Ibid. p. 73.
of both the Parties doth consent
unto, and alloweth, that is, the
Prince's and whole Realm's Deed;
whereupon justly no man can
complain, but must accommodate
himself to find it good, and obey
it.

That which is done by this
Consent is called *firm*, *stable* and
sanctum, and is taken for Law.

The *Parliament* abrogateth old Sir Tho. Smith. *Ibid.*
Laws. 2. Maketh new. 3. Giveth Arc. Parl. 2.
order for things past, and for Vide
things hereafter to be followed. Crompt. Jur. 3.
4. Changeth Right and Possessions
of private Men. 5. Legittimateth
Bastards. 6. Establisheth Forms
of Religion. 7. Altereth Weights
and Measures. 8. *Giveth Form of*
Succession to the Crown. 9. De-
fineth of doubtful Rights whereof
is no Law already made. 10. Ap-
pointeth Subsidies, Tallies, Taxes
and Impositions. 11. Giveth most
free Pardons and Absolutions.
12. Restoreth in Blood and Name.

13. As the highest Court condemneth or absolveth them who are put upon their Trial. And to be short, 14. All that ever the People of *Rome* might do, either *Centuriatis Comitibus* or *Tributis*, the same may be done by the *Parliament* of *England*; which representeth, and hath the Power of the whole Realm, both the Head and Body: For every English-man is intended to be there present, either in Person, or by Procuration, and Attorney, of what preheminance, state, dignity or quality soever he be, from the *Prince* (be he *King* or *Queen*) to the lowest Person of *England*. And the Consent of the *Parliament* is taken to be every man's consent.

*Rastal's
Statutes,
fol. 546.
25 H. 8.
c. 21.*

As for the Power of *Parliaments* over both the Statute and Common Law of this Realm, you will be best informed of it from the memorable words of an Act of *Parliament* it self, which are as followeth, viz. *Whereas this Realm*

re-

recognizing no Superiour under God, but only the King, hath been, and is free from Subjection to any Man's Laws; but only to such as have been devised, made, and ordained within this Realm, for the Wealth of the same, or to such other as by Sufferance of the King and his Progenitors, the People of this Realm have taken at their free Liberty by their own Consent to be used amongst them, and have bound themselves by long Use and Custom to the Observance of the same; not as to the Observance of the Laws of any Foreign Prince, Potentate or Prelate, but as to the Custom and ancient Laws of this Realm, originally established as Laws of the same, by the said Sufferance, Consents and Custom, and none otherwise. It standeth therefore with Natural Equity and Good Reason that all and every such Laws Humane, made within this Realm by the said Sufferance, Consents and Custom, the King and the Lords Spiritual and

Temporal and Commons representing the whole State of this Realm in the most High Court of Parliament, have full Power and Authority, not only to dispence, but also to authorize some Elect person or persons to dispence with those and all other Human Laws of this Realm, and with every one of them, as the Quality of the persons and Matter shall require. And also the said Laws, and every of them to abrogate, adnu, amplifie, or diminish, as it shall be seen to the King, and the Nobles and Commons of this Realm, present in Parliament, meet and convenient for the Wealth of this Realm.

4 Inst. 36.

The Power and Jurisdiction of the Parliament for making of Laws in proceeding by Bill, is so transcendent, and absolute, as it cannot be confined, either for Causes or Persons, within any Bounds. *Si Antiquitatem species, est vetustissima: si Dignitatem, est honoratissima: si Jurisdictionem, est capacissima.* The

Power of Parliament.

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The whole *Parliament* (which should best know its own Power) affirms, That the Court of *Parliament* is of such Authority, and the People of this Land of such a Nature and Disposition, as Experience teacheth, that the Manifestation and Declaration of any Truth or Right made by the Three Estates of this Realm assembled in *Parliament*, and by Authority of the same, maketh, before all other things most Faith, and certain quieting of mens Minds, and removeth the Occasion of Doubts.

Parliamentum omnia potest, says the 4 *Leon.* 174, 176.

The *Parliament* is of an absolute and unlimited Power in things Temporal, within this Nation.

The *Parliament* hath the highest and most sacred Authority of any Court: it hath an absolute Power, it is the highest Court in the Realm, as is acknowledged by our most learned and gravest Writers, and Historians.

Spartan's
Hist. f. 914.
Rot. Parl.
1 R. 3. In
Cotton's A-
bridgment,
f. 713; 714.

Sir Rob.
Ashlyn's
Argument,
c. 50.

Ibid.

Crompton
20.b.

A man gives Land to one, and to his Heirs Males; in that Case his Heirs Females also inherit; and this was adjudged in *Parliament*.

Petyt's
Preface to
Ancient
Rights, &c.
P. 41.

One of the fundamental and principal Ends of *Parliaments* was, for the Redress of Grievances, and easing the Oppressions of the People. And the *Mirror of Justices* says, c. 1. p. 9. That *Parliaments* were instituted to hear and determine the Complaints of the wrongful Acts of the King, the Queen, and their Children: and especially of those persons against whom the Subjects otherwise could not have common Justice.

Sir Rob.
Atkyns Ar-
gument, p.
45.

The greater the Persons are, if they are in the Rank of Subjects, they must be subject to the King's Laws, and they are the more proper for the Undertaking, and Encounter of this High Court. It will not be *impar congressus*.

Id. 37.

King John had resign'd up the Crown of *England* to the Pope, by the Hand of *Pandulphus* his Legat, and

Power of Parliament.

25

and sordidly submitted to take the Crown at his Hand again, at a yearly Tribute. In the Reign of our Noble King *Edward* the Third, the Pope demanded his Rent, and all the Arrears. The Prelates, Dukes, Counts, Barons, and Commons resolved, That neither the *King*, nor any other, could put the Realm, nor the People thereof, into Subjection, *sans l'assent de eux*, without their Assent.

This intimates, that with their *ibid.* joynt Consent the Crown may be disposed of. And it was the highest Resolution in Law, in one of the highest Points in Law, concerning the *King's* claim of an Absolute Power, and in a Time, when the Pope was in his height.

It is the proper Work of this *ibid.* Supreme Court to deal with such Delinquents, as are too high for the Court of *King's Bench*, or other ordinary Courts.

. Daughters, and Heirs apparent 4 Inst. 36.
of a Man, or Woman, may by Act
of

of *Parliament* inherit, during the Life of the Ancestor.

Ibid. It may adjudge an Infant or Minor to be of full Age.

Ibid. It may Attaint a Man of Treason, after his Death.

Ibid. It may Naturalize a meer Alien, and make him a Subject born.

Ibid. It may bastard a Child, that by Law is Legitimate, (*viz.* begotten by an Adulterer, the Husband being within the four Seas.)

Ibid. It may Legitimate one that is Illegitimate, and born before Marriage, absolutely : it may Legitimate *secundùm quid*, and not *simpliciter*.

*Selden's
Judicature
91.*

21 *Rich.* 2. The Lords Appellants accused the Duke of Gloucester of Treason ; and tho' they knew he was dead, they pray'd the King that he might be brought to his Answer. The King sent his Writ, &c. they desired Judgment, and had it.

Ibid. So Robert Possington was impeached at the Parliament at Westminster,

minster, and found Guilty, long Time after he was dead, and so forfeited his Estate.

John of Gaunt Duke of Lanca- 4 Inst. 36.
ster had by *Catherine Swinford*, before Marriage, four illegitimate Children, *Henry, John, Thomas*, and *Joan*. At the *Parliament* holden 20 *Rich. 2.* the King by Act of *Parliament*, in Form of a Charter, doth Legitimate these three Sons, and *Joan* the Daughter.

Thomas Cromwel Earl of Essex Ibid.
was attainted by *Parliament*, and forth-coming to be heard, and yet never call'd to answer in any of the Houses of *Parliament*: and resolved by the Judges, That if one be Attainted by *Parliament*, it can never come in question after, whether he were call'd, or not call'd to answer: for the Act of Attainder being pass't by *Parliament* did bind.

Where by Order of Law a man Id. 39.
cannot be Attainted of High-Treason, unless the Offence be in Law High-

High-Treason ; he ought not to be Attainted by general Words of High-Treason by Authority of *Parliament* (as sometimes hath been used) but the High-Treason ought to be specially exprest ; seeing that the Court of *Parliament* is the highest and most honourable Court of *Justice*, and ought to give Example to inferior Courts.

Id.42.

Acts against the Power of the *Parliament* subsequent bind not. It is against the Power and Jurisdiction of the *Parliament*, the Liberty of the Subject , and unreasonable.

Id.42.

The Stat. 11 *Rich. 2. c.5.* That no Person should attempt to revoke any Ordinance then made, repealed ; for that such Restraint is unreasonable.

Ibid.

An Act 11 *Rich.2. c. 3.* That no man, against whom any Judgment or Forfeiture was given, shou'd sue for Pardon, or Grace, &c. was holden to be unreasonable , without Example, and against the Law and Custom

Custom of *Parliament*, and therefore void.

The High Court of *Parliament* *Ibid.* to be committed to a few (as in 21 *Rich. 2. c. 16.*) is holden to be against the Dignity of a *Parliament*, and that no such Commission ought to be granted.

Tho' it be apparent, what transcendent Power and Authority this *Parliament* hath, and tho' divers *Parliaments* have attempted to bar, restrain, suspend, qualify, or make void subsequent *Parliaments*; yet could they never effect it: for the latter *Parliament* hath ever Power to abrogate, suspend, qualify, explain, or make void the former in the Whole, or in any Part thereof, notwithstanding any Words of Restraint, Prohibition, or Penalty in the former. For it is a Maxim in the Law of *Parliament*, *Quodd Leges posteriores priores contrarias abrogant.*

An Act of *Parliament* doth *Hobart* include every man's Consent, ^{256.}

as well to come, as present.

Hakewel
86.

The Sovereign Power of this High Court of *Parliament* is such, That altho' the *King's* Majesty hath many great Priviledges and Prerogatives, yet many Things are not effectual in Law, to pass under the great Seal by the *King's* Charter, without *Parliament*.

Id. 87.

The *King* by his Letters Patents may make a Denizen; but cannot Naturalize him to all purposes, as an Act of *Parliament* may do.

Id 89.

If a man be Attainted of Felony, or Treason, by Verdict, Outlawry, Confession, &c. his Blood is corrupted (which is a perpetual and absolute Disability for him, or his Posterity, to claim any Hereditament in Fee-simple, either as Heir to him, or any Ancestor *paramount* him) and he shall not be restored to his Blood, without *Parliament*. And the *King* may give to any attainted Person his Life, by this Charter of *Parliament*.

Id 90.

The *King* cannot alter the
Com-

Power of Parliament.

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Common Law, or the general Customs of the Realm (as Gavel-kind, Borough-English, or the like) without Parliament.

If a King have a Kingdom by Ibid.
Discent, seeing by the Law of that Kingdom he doth inherit that Kingdom, he cannot change those Laws of himself, without Consent of Parliament.

By the Laws of this Kingdom, Ibid.
the King cannot by his Proclamation alter the Law: but the King may make Proclamation, That he shall incur the Indignation of his Majesty, that withstands it. But the Penalty of not obeying his Proclamation may not be upon Forfeiture of his Goods, his Lands, or his Life, without Parliament. Brook 123.

Le Parliament d'Engleterre ne 98. Vide
lia Ireland, quoad Terras suas, quar 20 H. 6. 9.
ils ont Parliament la: mes il poient Crompton
eux lier quant al Choses transitory, 22.b.
come eskipper de Lane, ou Merchandize, al intent de ceo carrier al autre Lieu ultra Mare.

The

The *Parliament* of *England* cannot bind *Ireland*, as to their Lands, for they have a *Parliament* there: but they may bind them, as to Things transitory, as the shipping of Wool, or Merchandize, to the intent to carry it to another Place beyond the Sea.

4 Inst. 350. Sometimes the *King* of *England* call'd his Nobles of *Ireland* to come to his *Parliament* of *England*, &c. And by special Words the *Parliament* of *England* may bind the Subjects of *Ireland*.

Ibid. 23. The *Lords* in their House have Power of Judicature; and the *Commons* in their House have Power of Judicature; and both Houses together have Power of Judicature.

Ibid. This Power is best understood by reading the Judgments and Records of *Parliament* at large, and the Journals of the *House of Lords*, and * the Book of the Clerk of the *House of Commons*.

* 6 H. 8.
c. 16.
Rast. 429,
430.
Vaughan
285.

If Inconveniencies necessarily follow

follow out of the Law, only the *Parliament* can cure them.

If a Marriage be declared by *Id.* 327. Act of *Parliament* to be against God's Law, we must admit it to be so: for by a Law (that is by an Act of *Parliament*) it is so declared.

In many Cases Multitudes are bound by Acts of *Parliament*, ⁴ *Inst.* 4, 5. which are not Parties to the Elections of *Knights*, *Citizens*, and *Burgesses*, as all they that have no Free-hold, or have Free-hold in ancient Demesne, and all Women having Free-hold, or no Free-hold; and Men within the Age of One and twenty years, &c.

It is declared by the *Lords* and *Id.* 14. *Commons* in full *Parliament*, upon Demand made of them on the Behalf of the *King*, that they could not assent to any Thing in *Parliament*, that tended to the disherison of the *King*, and his Crown, whereunto they were sworn.

The Expounding of the Laws *Hakewel*
D doth 94.

doth ordinarily belong to the Reverend Judges ; and in Case of greatest Difficulty , or Importance , to the High Court of Parliament.

4 Inst. 22.
Vid. Stat. 1.
Jac. 1 c. 1.

Errors by the Law in the *Common Pleas* are to be corrected in the *King's Bench* ; and of the *King's Bench* in the *Parliament* , and not otherwise.

Studen's
Judicature
2.

ACTIONS at Common Law are not determined in this High Court of *Parliament* , yet Complaints have ever been received in *Parliaments* , as well of private Wrongs, as publick Offences. And according to the Quality of the Person , and Nature of the Offence, they have been retained, or referred to the Common Law.

Id. 4, 5.

There be divers Precedents of the Trial of Bishops by their Peers in *Parliament* , as well for Capital Offences, as Misdemeanors, whereof they have been accused in *Parliament*. As the Arch-Bishop of *Canterbury*, 15 Ed. 3. n. 6, 7, 8. & *ibid.* postea, 44. & 39. & *ibid.* 17 E. 3. 22.

E.3. 22. And the Bishop of *Norwich*, 7 *Rich.2.* for Misdemeanors : So were the Bishops of *Tork* and *Chichester* tried for *Treason* by their *Peers* in *Parliament*, upon the Appeal of the Lords Appellants, 11 *R. 2.*

Anno 21 R. 2. The *Commons* Accused the Arch-Bishop of *Canterbury* of *Treason*, and the *Temporal Lords* judged him a Traytor, and Banished him : But if the Bishop be accused out of *Parliament*, he is to be tried by an ordinary Jury of Free-holders ; for his Honour is not inheritable, as is the Temporal Peers out of *Parliament*, save that only of their Trial. As no Day of Grace to be granted against them in any Suit.

A *Knight* to be returned upon the Pannel where a *Bishop* is Party, and no Process in a Civil Action to be awarded against his Body, and the like. And by this it appeareth what Persons are, *de Jure*, triable by the *Lords* in *Parliament*, viz. their *Peers* only. D 2 Judg-

d. 168.

Judgments in *Parliaments* for Death have been strictly guided *per Legem Terræ*.

Sir Rob.
Atkyns Ar-
gument,
c. 36.

The *Parliament* hath three Powers ; a *Legislative*, in Respect of which they are call'd the three Estates of the Realm : a *Judicial*, in respect of this it is call'd *Magna Curia*, or the High Court of *Parliament* : a *Counselling Power*, hence it is call'd *Commune Concilium Regni*.

Id. 49.

The *Parliament* gives Law to the Court of the *King's Bench*, and to all other Courts of the Kingdom : and therefore it is absurd, and preposterous that it shou'd receive Law from it, and be subject to it. The greater is not judged of the less.

Id. 50.

All the Courts of Common Law judge only by the ordinary Rules of the Common Law : but the Proceedings of *Parliament* are by quite another Rule. The Matters in *Parliament* are to be discussed and determined by the Custom and Usage

Usage of *Parliament*, and the Course of *Parliament*, and neither by the Civil; nor the Common Law, used in other Courts.

The Judges of all the Courts of *Ibid.* Common Law in *Westminster* are but Assistants, and Attendants to the High Court of *Parliament*. And shall the Assistants judge of their Superiors?

The High Court of *Parliament* *Ibid.* is the *dernier Resort*, and this is generally affirm'd, and held: but it is not the last, if what they do may yet again be examin'd, and controlled.

Because the High Court of *Id.* 52. *Parliament* proceeds by a Law peculiar to that High Court, which is call'd *Lex & Consuetudo Parliamenti* (and not by the Rules of the Common Law) and consists in the Customs, Usages, and Course of *Parliament*; no Inferior Court can, for this very Reason, judge, or determine of what is done in *Parliament*, or by the *Parliament*. D 3 A

Arg. Parl.
85.

A Statute, or Act of *Parliament* shall not be proclaimed, for the *Parliament* represents the Body of the whole Realm, for there are *Knights*, and *Burgesses* of every County, and Town. But otherwise where it is ordained by the Act, that it shall be proclaimed.

Id. 100.

A man Attainted of Felony, or Treason, shall not be restored in Blood without *Parliament*.

Petyt's
Appendix
to Miscel.
Parlia-
ment, n. 38.

28 Ed. 1. A Truce being concluded between the *English* and *French*, by King *Edward's* Ambassadors (who therein had dishonorably agreed to include the *Scots*) the Ambassadors at the ensuing *Parliament* were sharply rebuked and corrected, not only by the *King* himself, the *Prelates* and *Nobles*, but by the *Commons*.

Turner's
Case of
Bankers,
36.

The Court of *Parliament* was the Sanctuary, whether the distressed Subject in his Exigence fled for Shelter, and Refuge, and alway found it.

Into the Sacred Bosom of *Parliaments*

Power of Parliament.

39

liaments it was, that they powred out their Sighs and Groans with constant Successe: and when in Cases of high Nature the Common Law was arrested, and stopt in her Proceedings, *Parliaments* evermore ran into their Rescue, and in dutiful ways discharged those Locks and Bars which had been unjustly fastned on the *Exchequer*.

Ibid. Vide
Several
Precedents
and Records.

The Right of the Crown of *England*, and the Law of the said Realm is such, that upon the Mischiefs and Damages which happen to the Realm, the *King* ought, and **is bound by his Oath** (of the Accord of his People in *Parliament*) thereof to make Remedy, &c.

Stat. Provis.
25 Ed. 3.
Rast. Stat.
99.

To conclude this Chapter, *Le Parliament ad Absolute poiar en tous Cases, come a faire Leys, d'adjuger Matters en Ley, à trier vie del home, à reverser Errors en Bank le Roy; especialment lou est ascun Commune Mischief que l'ordinary Course del Ley n'ad ascun means à remedier; en tiel Case ceo est le*

Finche's

N. 1. 2. C. 1.

L. 2. C. 1.

L. 21. b. 22. a

proper Court. Et tous choses que ils font sont come Judgments. Et si le Parliament mesme erre, come il poet, ceo ne poet estre reverse en ascun Lieu forsque en le Parliament. Which, because it is omitted (as severall other things are in the Book translated into English) I will thus give it the Reader that does not understand French. The Parliament hath Absolute Power in all Cases, as to make Laws, to adjudge Matters in Law, to try men upon their Lives, to reverse Errors in the King's Bench; especially where there is any Common Mischief which the ordinary Course of the Law hath not any means to remedy, in such Case this is the proper Court. And all things which they do are as Judgments. And if the Parliament it self errs, as it may, that cannot be reversed in any place but in Parliament.

C H A P. III.

House of Lords.

Here certainly cannot in the ^{a Nalson} whole World be seen a more ^{366.} illustrious Court, than this High and Honorable Assembly of *Peers* in *Parliament*; nor any Thing of greater Benefit and Advantage to the Subjects of this Monarchy.

No *Lord* of *Parliament* can sit ^{Sir Simon d'Ewes Jour. II. Col. i.} there, till he be full One and twenty years, unless by special Grace of the Prince, and that very rarely, unless they be near upon the Age of Twenty years at least.

A Bishop elect may sit in *Parliament*, as a *Lord* thereof. ^{Ibid.}

If the *King* by his Writ calleth ^{4 Inst. 44.} any *Knight* or *Esquire* to be a *Lord* of the *Parliament*, he cannot refuse to serve the *King* there in *Communi illo Consilio*, for the Good of his Country.

It

Sir Simon
d'Ewes
Journal,

Col. 2.

It lies in the Favour of the *Prince* to make Heirs of Earldoms Members of the *Upper House*, by Summoning them thither by Writ: but then they take not their Place there as the Sons of *Earls*, but according to the Antiquity of their Fathers Baronies.

Id. 140.
Col. 1.

The Arch-Bishop of *Canterbury* is the first Peer of the Realm.

Id. 535.
Col. 2.

The *Earl-Marshal's* Place in *Parliament* is betwixt the *Lord Chamberlain*, and the *Lord Steward*.

4 Inst. 45.

No man ought to sit in that High Court of *Parliament*, but he that hath Right to sit there.

Id. 44.

If a *Lord* depart from *Parliament* without licence, it is an Offence done out of the *Parliament*, and is finable by the Law.

Id. 12.

Any *Lord* of the *Parliament*, by License of the *King* upon just Cause to be absent, may make a Proxy.

Townsh. Coll.
135.

43 *Eliz.* 1601. Agreed by the *Lords*, That the ancient Course of

of the House is , that the Excuses of such *Lords*, as shou'd happen to be absent from the House upon reasonable Occasions, ought to be done by some of the Peers, and not by other Information.

Vide Sir
Simon
d'Ewes
Journal,
605.

All the Priviledges which do belong to those of the *Commons* *House of Parliament*, à fortiori do appertain to all the *Lords* of the *Upper House*; for their Persons are not only free from Arrests, during the *Parliament*, but during their Lives; nevertheless the original Cause is by reason they have Place and Voice in *Parliament*. And this is manifest by express Authorities, grounded upon excellent Reasons in the Books of Law.

Hakewell
82.

A Proxy is no more than the constituting of some one or more by an absent *Lord*, to give his Voice in the *Upper House*, when any difference of Opinion, and Division of the House shall happen: for otherwise, if no such Division fall out, it never cometh to be questioned'd,

Sir Simon
d'Ewes
Journals 3.
Col. 2.

stion'd, or known, to whom such Proxies are directed; nor is there any the least use of them, save only to shew, prove, and continue the Right which the *Lords* of the *Upper House* have, both to be Summon'd, and to give their Voices in the same House, either in their Persons, or by their Proxies.

Ibid. Col. 2. As many Proxies as any Peer hath, so many Voices he hath beside his own: and if there be two or three Proxies constituted by one absent *Lord* (as is frequent) then alway the first named in the same, is to give the Voice, if he be present; and if absent, then the second, & *sic de reliquis*.

Id. 6. Col. 1. It is plain by the ancient Treatise, *Modus tenendi Parliamentum*; that if a Peer neither came to the *Parliament*, nor sent a Proxy upon his Writ of Summons, he forfeited 100 *l.* if an *Earl*, 100 Marks if a *Baron*, &c.

Townsh. Coll. It seldom happeneth that any
4.39, 40, Bishop doth nominate fewer than
42. three

three, or two *Proctors*; nor any *Temporal Lord* more than one.

John Arch-Bishop of Canterbury Id. 34.
had this *Parliament* five *Pro-*
xies.

1 *Eliz.* A *Lord of Parliament* 4 Inst. 12,
by *License* obtained of the *Queen* 13.
to be absent, made a *Proxy* to
three *Lords of Parliament*; one of
which gave *Consent* to a *Bill*; the
other two said, *Not Content*. And
it was by order of the *Lords* de-
bated among the *Judges* and *Ci-*
vilians *Attendants*, and conceiv'd
by them, that this was no *Voice*;
and the *Opinion* was affirmed
by all the *Lords*, That it was no
Voice.

2 *Car. I.* 1626. The *House of* Rush. Coll.
Peers made an *Order*, That after 269.
this *Session*, no *Lord* of this *House*
shall be capable of receiving above
two *Proxies*, or more, to be num-
bered in any *Cause* voted.

In the *Lords House*, the *Lords* Arc. Parl. 12.
give their *Voices* from the *puisne* Smith's
Lord seriatim, by the *Word* [*Con-* Common-
wealth, 87,
tent]

tent] or [Not Content.] 4 Inst. 34.
First for himself, and then severally for so many as he hath Letters and Proxies.

Townf. Coll.

11.

A Bill had three Readings in one Forenoon, in the *House of Lords*.

Townf. Coll.

9.

Where a *Committee of Lords* is selected out to meet with another *Committee of the House of Commons*; neither the *Judges*, being but Assistants, nor the *Queens Council*, being but Attendants of and upon the *House*, were ever nominated as *Joynt-Committees* with the *Lords*. But when the *Lords* among themselves do appoint a *Committee* to consider of some ordinary Bill, especially if it concern Matter of Law, it hath been anciently used, and may still, without Prejudice to the Honour of the *House*, that the *King's* learned Council, but especially the *Judges*, may be nominated as *Committees* alone, or as *Joynt-Committees* with the *Lords*.

January 19. 1597. 39 Eliz. It was

was resolved, That the Order and ^{Townsh. Coll.} Usage of this House was, and is, ^{94.} Sir Simon that when any Bills or Messages ^{d'Ewes} are brought from the Lower House, ^{Jour.} to be preferr'd to the Upper House, the Lord Keeper, and the rest of the Lords, are to rise from their Places, and to go down to the Bar, there to meet such as come from the Lower House, and from them to receive in that Place their Messages, or Bills. Contrariwise, when any Answer is to be delivered by the Lord Keeper, &c.

In passing of Bills, if the *Not- Arc. Parl.* Contents be most, then the Bill is dash't, i.e. the Law is annihilated, and goeth no further. If the *Contents* be the most, then the Clerk writeth underneath, *Soit baile aux Commons.*

3 Car. 1. 1626. Resolved upon ^{Rush. Coll.} the Question, That the Priviledge ^{365.} of this House is, that no Lord of Parliament, the Parliament sitting, or within the usual Time of Priviledges of Parliament, is to be im-

imprison'd, or restrain'd, without Sentence, or Decree of the *House*, unless it be for *Treason*, or *Felony*, or refusing to give Surety of the Peace.

2 *Nelson*
380.

Giving the Lye to a *Peer* is a Breach of Priviledge.

Hakewel
84.

Vide *Kel-*
wey 184.

Vide Lord
Hollis's

Letter.

Vide Lord
Hollis's

Remains.
Vid. contra

Vid. *Grand*

Ever since the Conquest, the *Arch-Bishops*, and *Bishops* have no Title to have Voice and Place in *Parliament*, but only in respect of their *Temporal Baronies*; where they are present, *quousque perveniat ad Diminutionem, &c.*

Hunt's Argument for the *Bishops Right, &c.*
Question concerning Bishops Right, per totum.

Hakewel
84.

Vid. contra

Hunt ut
suprà per
tot.

Vid. *Grand*

Question

concern-
ing *Bishops*

Right, &c.

per totum.
Selden of

Judicature
&c. p. 150.

When a Question is had of the Attainder of any *Peer*, or other, in *Parliament*, the *Arch-Bishops* and *Bishops* depart the *Higher House*, and do make their Proxies: for by the Decrees of the Church, they may not be Judges of Life and Death.

II *Rich. 2.* Divers *Lords*, and others, being appealed of *Treason*, and other *Misdemeanors*, the *Pre-*
lates

lates absented themselves during the Trial, having first made Protestation, saving their Right to be present in *Parliament* *. *Vid. there the Protestation of the Bishops for ever.

The Protestation, I think, intends, That they could not be present by reason of the Common Law, and by reason of an Ordinance made at the Council at *Westminster*, in 21 *Hen. 2.* by which all Clergy-men were forbidden *agitare Judicium Sanguinis*, upon Pain to be deprived both of Dignities, and Orders. For surely, as I think, they might otherwise have been present, both by the Common Law, and by the Law of God. Id. 151.

All the *Lords Spiritual and Temporal*, 11 *Rich. 2.* claimed as their Liberty and Franchise, that the great Matters moved in this *Parliament*, and to be moved in other *Parliaments* in Time to come, touching the *Peers* of the Land, ought to be admeasured, adjudged, and discussed by the Course of the *Judicature* Selden's 6c. 39.

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Selden's Judicature &c. 39.

the *Parliament*, and not by the Civil Law, nor by the Law of the Land, used in the more *base Courts* of the Realm: which the *King* granted in full *Parliament*.

Id. 53. The Proceeding against a *Peer* in *Parliament* is not necessary.

Id. 61. It appears that the *Lords* cannot of themselves judge a Common Person for an Offence, for he is no *Peer*, according to that of 4 *E. 3. Numb. 26.*

Id. 123. 1 *Rich. 2.* The Lord *Beauchamp* was sworn, and examined; and the Duke of *Lancaster* being one of the *Committee*, was diligently examin'd before the rest of the said *Committee*, but not sworn *ad testificandum*. *Earls* and *Dukes* are not sworn.

Id. 132. In Judgments on Delinquents in *Parliament*, the *Commons* might *accusare*, & *petere Judicium*, the *King* assentire, and the *Lords* only did *judicare*.

Id. 141.
Vid. id. 144
147, 148, 154, 158. The *King's Assent* ought to be to Capital Judgments, and the
Lords

House of Lords.

51

Lords Temporal to be only Judges therein, and not the *Lords Spiritual*: but in Misdemeanors, the *Lords Spiritual and Temporal* are equal Judges, and the *King's Assent* is not necessary, *Id.* 136. yet it seemeth to me, that the *King's Assent* is necessarily required in Capital Causes and Judgments.

If a *Peer* be committed to Prison, the *Gentleman Usher* hath the Charge of him thither, and the *Serjeant* attending on the Great Seal.

How *Lords of Parliament* shall be placed in the *Parliament*, and other Assemblies and Conferences of Council. Vide Stat. 31 Hen. 8. c. 10. Vid. 4 Inst. 362.

A *Peer* of the Realm shall be tried in an Appeal by *Knights*, &c.

and not by his *Peers*, because it is at the Suit of the Party, *Brook* Arcana Parl. 70.

142, 153. Otherwise it is in an Indictment of *Treason* or *Felony*, for that it is at the Suit of the *King*.

The *Duke of Somerset* in the Time of *Ed. 6.* was tried for *Fe-*

E 2

lony

lony and Treason by his *Peers* upon an Indictment, for it is the Suit of the *King*.

1 Hen. 4. 1.
Id. 72.

When a *Lord of Parliament* is tried by his *Peers*, they shall not be sworn to say their *Verdict*; but they shall give their *Verdict* upon their *Honor*, and are not charged but upon their *Honors*.

27 Hen. 8.
f. 27.

A *Lord of Parliament* shall have *Knights* upon his Trial in every Action.

27 Hen. 8.
f. 17.

A *Lord of Parliament* may be Outlawed for *Murder*.

27 H. 8. 27.

If a *Lord of Parliament* makes a *Rescous*, a *Capias* shall be taken out against him, if the *Sheriff* return the *Rescous*; otherwise it is in Case of Debt.

11 H. 4. 15.

A *Capias ad Satisfaciendum* does not lye against a *Lord of Parliament*, 27 Hen. 8. 27. for the Law presumes that he has *Assets*.

Dyer 316.

An Attachment is not grantable by the Common Law, Statute Law, Custom, or Precedent against

against a *Lord of Parliament* : and the *Lord Cromwel* by Order in the *Parliament-Chamber* was discharged of such Process.

In a *Præmunire* against a *Lord* Art. Parl. of *Parliament*, he ought to appear in his proper Person, and not by Attorney, unless he has a special Writ of *Chancery*.

C H A P. IV.

Power of the House of Lords.

A *Peer* of the Realm being Indicted of *Treason*, or *Felony*, or *Misprision of Treason*, may be Arraigned thereof in *Parliament*, a *Lord Steward* being appointed; and then the *Lords Spiritual* shall make a *Procurator* for them : and the *Lords*, as *Peers* of the Realm, during the *Parliament*, are Judges,

whether the Offence be *Treason*, &c. that is supposed to be committed by any *Peër* of the Realm, and not the *Justices*.

Ibid.

Vide *Rush.*

Coll. *passim*.

Vid. *Nalson*.

Many notable Judgments by the *Lords*, at the Prosecution of the *Commons*, and in later Times.

Vid. *Crompton*,

18.b.

Error serra sue in Parliament, & *Parliament poet prendre Recognizance*, Brook 137. *Error. Error shall be sued in Parliament, and the Parliament may take Recognizance.*

4 Inst. 21.

If a Judgment be given in the *King's Bench*, either upon a *Writ of Error*, or otherwise; the Party grieved may (upon a Petition of Right made to the *King* in *English* or in *French*, and his Answer thereto, *Fiat Justitia*) have a *Writ of Error* directed to the *Chief Justice* of the *King's Bench*, for removing of the Record in *præsens Parliamentum*, &c.

Id. 22.

When one sueth in *Parliament* to Reverse a Judgment in the *King's Bench*, he sheweth in his Bill

Bill, which he exhibiteth to the Parliament, some Error, or Errors, whereupon he prayeth a *Scire Facias*.

The Proceeding upon the *Writ* ^{Id.} of Error is only before the Lords in the Upper House, *Secundum Legem & Consuetudinem Parliamenti*.

The Case between *Smith* and ^{2 Nelson} *Busby* in a *Writ of Error*, decida- ^{716.} ble in no other Court, but in Parliament.

If any Question be moved in ^{4 Inst. 363.} Parliament for Priviledge, or Precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament, in the House of Lords, as all Priviledges and other Matters concerning the Lords House of Parliament are.

November 1641. Resolved by ^{2 Nelson} the House, *Nemine contradicente*, ^{625.} That it belongs to the House of Peers, by the ancient Laws and Constitutions of this Kingdom, to interpret Acts of Parliament, in Time of Parliament, in any

Cause that shall be brought before them.

2 Nalson
381.

Julij 12. 1641. An Order of the *Lords* for Relief of a *Feme-Covert*, and her Children, against a Husband refusing to Co-habit.

Rushw. Col.
27, 28.

The Sentence pronounced by the *Lords* upon Sir *Giles Mompeson*, and Sir *Francis Michel*, for Projectors.

*Selden's
Judicature
&c* 6, 7.

Upon Complaints and Accusations of the *Commons*, the *Lords* may proceed in Judgment against the *Delinquents* of what Degree soever, and what Nature soever the Offence be. For where the *Commons* complain, the *Lords* do not assume to themselves Trial at Common Law. Neither do the *Lords* at the Trial of a Common Impeachment by the *Commons*, *cedere de Jure suo*: for the *Commons* are then instead of a Jury; And the Parties Answer, and Examination of Witnesses, are to be in their Presence, or they to have Copies

Copies thereof: and the Judgment is not to be given but upon their Demand, which is instead of a Verdict; so the *Lords* do only judge, not try the *Delinquent*.

28 *Hen. 6.* Tho' the *Lords* re-ld.98. refused to commit the Duke of *Suffolk* upon the *Commons* complaint of him of a common Fame of *Treason*; yet when they accused him of particular *Treason*, he was Committed, and brought Prisoner to his Answer. But in Cases of Misdemeanors it is otherwise; then the Party Accused, whether *Lord*, or *Commoner*, answers as a *Freeman*.

The *Lord* within his Place, *Ibid.* the *Commoner* at the Bar; and they are not committed till Judgment; unless upon the Answer of a *Commoner*, the *Lords* find Cause to commit him, till he find Sureties to attend, &c. lest he should fly. *Prout Jo. Cavendish* upon the *Lord Chancellor's* demand of Justice against him for his false Accusation,

culation, was Committed after his Answer until he put in Bail, *Anno 7 Rich. 2.* and before Judgment.

Id. 105. In Cases of Misdemeanors only, the Party accused was never deny'd Counsel.

Id 163. If the *Commons* do only complain, and do neither impeach the Party in Writing, nor by Word of Mouth in open House, nor demand Trial to be in their Presence: in these Cases it is in the Election of the *Lords*, whether the *Commons* shall be present, or not.

Id. 173. In Complaints of *Extortion*, and *Oppression*, the *Lords* awarded Satisfaction to the Parties wronged, which sometime was certain, sometime general; but alway *secundum, non ultra Legem*.

Id 176,
177. It appeareth plainly by many Precedents, That all Judgments for Life and Death, are to be render'd by the *Steward of England*, or by the *Steward of the King's House*: and this is the Reason, why

why at every *Parliament* the King makes a *Lord Steward* of his *House*, tho' he hath none out of *Parliament*. And at such Arraignment the *Steward* is to sit in the *Chancellor's Place*: and all Judgments for Misdemeanors by the *Chancellor* by him who supplies the *Chancellor's Place*.

In Case of Recovery of *Da-*Id. 187.
 mages, or Restitution, the Parties are to have their Remedy (the *Parliament* being ended) in the *Chancery*, and not in any other inferior Court at the Common Law. But the *Lords* in *Parliament* may direct how it shall be levied.

The *Judges* (who are but As-^{Sir Simon}
 sistants to the *Upper House*) have ^{d'Ewes}
 leave from the *Lord Chancellor* or ^{Four. 527.}
Keeper, to sit covered in the *House*,
 but are alway uncovered at a *Com-*
mittee. ^{Col. 2.}

3 Car. I. The Sentence of the *Petys* Mis-
Lords Spiritual and Temporal, ^{cel. Parlia-}
 pronounced by the *Lord Keeper*, ^{ment. 212,}
 against ^{213.}

against Ensign *Henry Reynde*, for ignominious Speeches uttered by him against the *Lord Say and Seal*, and for his Contempt of the High Court of *Parliament*, was thus:

1. That he never bear Arms hereafter, but be accounted unworthy to be a Soldier: 2. To be imprisoned during Pleasure: 3. To stand under the Pillory (with Papers on his Head shewing his Offence) at *Cheapside, London*, and at *Banbury*: 4. To be fined at 200 *l.* to the *King*: 5. To ask Forgiveness here of all the *Lords of Parliament* in general, and of the *Lord Say* and his Son, both here, and at *Banbury*.

Id. 213.

The Court of *Star-Chamber* ordered by the *Lords* to put the said Sentence in Execution, out of Time of *Parliament*.

CHAP.

CHAP. V.

House of Commons.

THE *House of Commons* was Sir R. Atkyns Argument, &c. p. 13. originally, and from the first Constitution of the Nation, the Representative of one of the Three Estates of the Realm, and a part of the *Parliament*.

It is affirmed by Mr. *Lambard*, Lambard's Archeion, 257, 258. That *Burgesses* were chosen to the *Parliament* before the Conquest.

The ancient Towns call'd *Boroughs*, Bo-Littleton, Sect. 164. are the most ancient Towns that are in *England*: for the Towns that now are Cities or Counties in old time were Boroughs; and call'd *Boroughs*, for that of such old Towns came the *Burgesses* to the *Parliaments*.

Knights of the Shire to serve in Sir Rob. Atkyns 18. *Parliament*, and the paying Wages to them for their Service, has been Time out of Mind, and did not

not begin 49 *Hen. 3.* for that is within Time of Memory, in a Legal Sense.

Id. 34.

The *House of Commons*, as a Member of the High Court of *Parliament*, have been as ancient as the Nation it self, and may in the Sense of *Julius Cæsar*, be accounted among the *Aborigenes*, and that they have had a perpetual Being (to speak in the Language of the Law) *à Tempore cujus Contraria memoria Hominum non existit*, and that they are therefore capable by Law (together with the rest of the Three Estates in *Parliament*) to prescribe and claim a share in all Parliamentary Powers and Priviledges; I do not mean separately, but in conjunction with those other Estates, which they could not otherwise legally have done, if their Original and Commencement could have been shewn.

Pitt's
Preface to
the ancient
Rights of
the Com-
mons, &c.
p. 3.

During the *British, Saxon, and Norman Governments*, the Freemen

(or

(or *Commons of England*, as now call'd, and distinguish'd from the great *Lords*) were *pars essentialis* & *constituens*, an essential and constituent Part of the *Wittena Gemot, Commune Concilium, Baronagium Angliæ*, or *Parliament* in those Ages.

It is apparent, and past all Con-^{Id. 12.}tradiction, That the *Commons* (in the Times of the *Britons, Saxons*, and *Picts*) were an essential Part of the *Legislative Power*, in making and ordaining Laws, by which themselves and their Posterity were to be govern'd, and that the Law was then the *golden Metwand* and *Rule* which measured out, and allowed the Prerogative of the *Prince*, and Liberty of the *Subject* (and when obstructed, or deny'd to either, made the Kingdom deformed and leprous).

I may with good Reason and^{Id. 123.} Warrant conclude, that our Ancestors the *Commons of England*, the *Knights, Gentlemen, Freeholders*,
Citi-

Citizens, and *Burgesses* of a great and mighty Nation, were very far from being in former Times such Vassals and Slaves, or so abject, poor, and inconsiderable, as the absurd and malicious Ignorance and Falsities of late Writers have been pleased to make and represent them, especially the Author of the *Grand Freeholders Inquest*, and Mr. *James Howel*, as if they were only Beasts of Carriage and Burthen, ordain'd to be tax'd and talliated, and have their Lives, Estates, and Liberties given away; and disposed of, without their own Assents.

4 Inst. 23. The Book of the Clerk of the *House of Commons* is a Record, as it is affirmed by Act of *Parliament*, 6 Hen. 8. c. 16.

*Selden's
Judicature
&c. 14.*

If the *Commons* do only Accuse by any way of Complaint whatsoever, and do not declare in Special against the Party accused, then the Suit is the *King's*, and the Party is to be Arraigned, or otherwise

wife proceeded against by Com-
mandment, *Ex parte Domini Re-*
gis.

In the *Lower House* sit the *Crompton* 2.
Speaker, and the *Knights, Citizens,* ^{b.}
Burgesses, and *Barons* of the *Cinque-* ^{4 Inst. 1.}
Ports, who represent the Body of
the whole Commonalty of *Eng-*
land.

All Persons, and Commonalties, ^{St. 3 Rich.}
which shall be summon'd to *Par-* ^{2.C.4.}
liament, shall come, as has been ^{Raft. 140.}
used and accustom'd of ancient
Time; and he that shall not come
(having no reasonable Excuse)
shall be amerced, and otherwise
punish'd, as of ancient **Time** has
been used.

F CHAP.

C H A P. VI.

Power of the House of Commons.

Rush. Coll.
217. Vol. 1.

THE House of Commons is a House of Information and Presentment, but not a House of Definitive Judgment.

Rushw. ib.

I Car. 1. 1625. Resolved, That common Fame is a good Ground of Proceeding for this House, either by Enquiry, or Presenting the Complaint (if the House find cause) to the King or Lords.

Selden's
Judicature
p 29.
Vid. id. 38.

26 Jan. 28 Hen. 6. The Commons required the Duke of Suffolk might be committed to Ward, for that the General Fame went of him, &c. The Lords, on Consultation with the Justices, thought the same to be no good Cause of Commitment, unless some special Matters were objected against him.
It

It is certain, and not to be deny'd, That in elder Time the People, or Free-men had a great Share in the Publick Council, or Government. For *Dion Cassius* (or *Xiphiline* out of him) in the Life of *Severus* assures us, *Apud hos* (i. e. *Britannos*) *Populus magnâ ex Parte Principatum tenet.*

It was not in the Power of all the Tenants *in Capite* in England, tho' with the King's Consent, to bind and oblige others, or to make, or alter a Law, *sine Assensu Communitatis Regni*, who had *Votum consultivum*, & *decisivum*, an Act of Authority and Jurisdiction, as well in assenting to Spiritual Laws as Temporal: as may appear for an Instance in their Declaration, or Protestation to *Edward the Third* in Parliament, which concludes thus, *For they will not be obliged by any Statute or Ordinance made, without their Assent.*

A Member of Parliament may charge any great Officer of State

with any particular Offence;
 4 Inst. 24. If any *Lord of Parliament* Spiritual or Temporal, have committed any *Oppression, Bribery, Extortion*, or the like; the *House of Commons*, being the general Inquirers of the Realm (coming out of all Parts thereof) may examine the same; and if they find, by the Vote of the House, the Charge to be true, then they transmit the same to the *Lords*, with the Witnesses and the Proofs.

Petyt's
 Miscel.
 Parl 64

1 Jac. I. 1603. The Bishop of *Bristol* publishing a Book, tending to make division and strife, wrong and dishonour both to the *lower House* and the *Lords* themselves, was complain'd of by the *Commons* to the *Lords*: and he made his Recantation:

1. That he had erred.
2. That he was sorry for it.
3. If it were to do again, he would not do it.
4. But protested, it was done of Ignorance, and not of Malice.

7 Jac. I.

7 Jac. I. 1609. Dr. Cowel writ a Book perniciously, asserting certain Heads to the Destruction of *Parliaments*, and the Fundamental Laws and Government of the Kingdom, and was complained of by the *Commons* to the *Lords*, who resolved to Censure his Errors and Boldness. *Ibid.* And afterwards the Book was burnt by Proclamation. Vide Rush.
Hist. Coll.
4 Car.

Vide Dr. Manwaring's Case, *Rush Coll.* & *Nalson.* *Vide* Petyt's *Miscell. Part.* 74.

Vide Dr. Montague's Case in *Rushworth*, *Nalson* & *Petyt's Miscell. Part.* 82.

4 Junij, 19 Jac. I. The *Commons* *Petyt's Miscell. Part.* 120. *House of Parliament* this day adjudged *Randolph Davenport Esq;* for his Offence in Mis-informing the House, in a Cause wherein he was produced as a Witness, to be committed Prisoner to the *Tower* for the space of one whole Month, and then to be discharged, paying his Fees.

Id. 160.

19 Jac. 1. Ordered by the Commons House of Parliament, That the Serjeant at Arms attending this House shall attach the Body of John Churchill, one of the Deputy-Registers of the Chancery, and him shall take into his Custody, and bring him to this House on Monday morning next at Eight of the Clock: and the said Serjeant is in the mean time to keep him so, as none be suffer'd to speak with him, but in the hearing of the Serjeant.

Vide ad hoc Rush. Collect. passim. Vide Nalson's 2 Volumes. Vide Selden's Judicature, &c. Vide Sir Robert Atkyns's Argument, &c. Vide Petyt's Preface to Miscell. Parliamentaria.

4 Inst. 23.

Vide Sir

d'Ewes

Jour. 182.

Thomas Long gave the Mayor of Westbury four pounds to be elected Burgeſs, who thereupon was elected. This Matter was examin'd, and adjudged in the House of Commons, *secundum Legem & Consuetudinem Parlamenti*, and the Mayor fined and imprisoned, and long

House of Commons.

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long removed; for this corrupt Dealing was to poison the very Fountain it self.

Arthur Hall a Member of the House of Commons, for publishing and discovering the Conferences of the House, and writing a Book to the dishonour of the House, was, upon due Examination, *secundum Legem & Consuetudinem Parliamenti*, adjudged by the House of Commons to be committed to the Tower for six Months, fined at Five hundred Marks, and expelled the House.

23 Apr. 1 *Mariae*, *Munckton* struck *William Johnson* a Burgess of *B.* return'd into the Chancery *Record*: for which, upon due Examination in the House of Commons, it was resolved, That *secundum Legem & Consuetudinem Parliamenti*, every man must take Notice of all the Members of the House returned of Record, at his peril: And the House adjudged *Munckton* to the Tower.

Scobel 113. Injuries offer'd to the Members, and their Servants, during the Session, have been usually punish'd by the House, upon Complaint.

Ibid. 29 Febr. 1575. One *Williams*, for assaulting a *Burgess* of this House, was upon complaint sent for by the *Serjeant*, and brought to the Bar, and committed to the *Serjeant's Ward*.

Ibid. 28 Nov. 1601. Complaint being made by Mr. *Fleetwood* a Member of the House, that one *Holland* a Scrivener, and one *Brooks* his Servant, had evil entreated and beaten the Servant of the said Mr. *Fleetwood* in his Presence: they were both sent for by the *Serjeant*, and brought to the Bar, and for the said Offence committed for five days to the *Serjeant*.

Id. 114. 12 Febr. 18. Jac. 1. Mr. *Lovel* a Member of the House, informed, That one *Darryel* threatened his Person (that for a Speech spoken by him in the House, he shou'd be sent to the *Tower*, during the

the Parliament, or presently after) Darryel was sent for by the Serjeant to answer it to the House, and upon Testimony of it, he was committed to the Serjeant till Thursday following, and then to acknowledge his Fault, or to be committed to the Tower.

16 Junij, 1604. Complaint being made of one Thomas Rogers a Currier, dwelling in Coleman-street, for abusing Sir John Savil in scandalous and unseemly Terms (upon his Proceedings at a Committee in the Bill touching Tanners, &c.) he was sent for by the Serjeant at Arms to the Bar, to Answer his Offence.

Sir William Aston Sheriff of London, being Examined before the Committee, concerning some Matters about the Customs, and not giving that clear Answer which he ought, and as the House conceived he might have done, was therefore committed to the Tower of London. And a Question was made

Rush. Coll.

656.

Vid. Pitt's

Miscell.

Parl. 108.

Aston's

Case.

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Four. 251. to the Bar, and committed to the
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Matters about the Customs, and *Miscell.*
not giving that clear Answer which *Parl. 108.*
he ought, and as the House conceived he might have done, was therefore committed to the Tower of London. And a Question was made

made in the House, at the Time,
*Whether the House had at any Time
 before committed a Sheriff of London
 to Prison. To which Mr.
 Selden made Answer, That he
 could not call to mind a Precedent
 of sending one Sheriff of London to
 Prison: but he well remembered a
 Precedent of sending both the She-
 riffs of London to the Tower, and
 instanced the Case.*

Townsh. Coll.

20.

Vide Sir

Simon

d'Erves

Four 438.

Col. I.

One Trussel being in Execution
 in one of the Compters in London,
 was Order'd to be brought before
 the Committee with his Keeper,
 without Danger of an Escape in
 the Execution.

Scobell 16.

4 Novemb. 1640. Upon a Re-
 port from the Committee for Pri-
 viledges, That several Indentures
 were returned for *Burgesses* for the
 Borough of *Bossinny* in the Coun-
 ty of *Cornwal*, the one by the
Mayor of the Town, the other pro-
 miscuously; The Committee were
 of Opinion, upon view of the bare
 Indenture, That Sir Charles Har-
 bord

House of Commons.

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board (who was return'd by the Mayor) was well return'd: but the House declar'd he shou'd not sit, till the Election were decided.

44 Eliz. 1601. The Course ^{Townsh. Coll.} hath been, if the House hath been ^{297.} desirous to see any Record, the Speaker shou'd send a Warrant to the Lord Keeper to grant a *Certiorari* to have the Record brought into the House.

Decemb. 1641. Ordered, *That* ^{2 Nalson} Mr. Speaker *do write his Letters* ^{793.} *to the Mayor of Berwick, enjoining him to require such Papists, and suspected Persons as reside there, or make their constant Repair thither, forthwith to depart the Town: and to tender the Oaths of Supremacy and Allegiance to such as shall refuse; and to proceed against them according to Law; and to require him that a Guard be kept at the several Gates, and that the Arms of that Place be in readines.* The like to the Mayor of Newcastle, and of Hull.

The

Rush. Coll.
358.

The *Commons* upon Imprisonment of their Members, and the Offence taken by the *King*, resolved to proceed in no other Business, till they were righted in their Liberties.

2 Nalson
732.

Dec. 1641. Mr. Long a Justice of the Peace sent to the *Tower*, for setting a Guard, without Consent of the *Parliament*.

4 Inst. 12.

A *Knight*, *Citizen*, or *Burgess* of the *House of Commons* cannot by any Means make a Proxy: because he is elected, and trusted by Multitudes of People.

Seldens
Jud. 101.

If the *Commons* accuse a *Commoner* of Misdemeanors; in such a State of Liberty or Restraint as he is in, when the *Commons* complain of him, in such he is to answer.

Seld. Jud.
Ibid.

Sir Francis Michel, and Sir John Bennet, were both committed by the *Commons*, before their Complaint to the *Lords*, and so they answered as Prisoners: but that in a sort may be call'd *Judicium parium suorum*. If

House of Commons.

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If the *Commons* impeach any man, they are in *loco proprio*, and there no Jury ought to be: only Witnesses are to be examined in their Presence, or they to have Copies thereof: and the Judgment not to be given until the *Commons* demand it.

The Presence of the *Commons* is necessary at the Parties Answer, and Judgment in Cases Capital. Now one Reason for the *King's* Assent, and the *Commons* Presence in such Judgments, may be this: Both *King* and *People* are to be satisfied for the Death of the *Subject*; therefore all Trials for Life and Death are publick in the full Assembly of the Court; and how can it be said in full *Parliament*, when the *Commons*, one of the States, are absent?

Tho' the *Commons* are not present when the *Lords* do consider of the *Delinquents* Answer, and the Proofs, and do determine of their Judgment: yet at their Return to their

their own Assembly, they consider among themselves, if the Proceedings were legal, and may come again, and shew it, and require a Re-hearing of the Cause; as they did at the Judgment of the Duke of Clarence in 18 Ed. 3.

Id. 162.

In Judgment on Misdemeanors, the Presence of the *Commons* is not necessary, unless they Impeach a *Delinquent*, prout 50 E. 3. and then they are present at all the Answers of those whom they Impeach, and demanded Judgment.

Ibid.

When the *Lords* had determin'd one part of the Complaint of the *Commons* against *William Ellis* (touching the wrong done to certain Scottish Merchants) the *Commons* pray'd a general Inquiry might be made of the Residue whereof they complained, which the *Lords* granted.

Id. 163.

When the Lord *Neuil* answered, the *Commons* required that one *Richard Love* might be examined, to prove that which the said Lord deny'd,

House of Commons.

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roll. 74
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deny'd, and so departed: but two of the *Commons* remained, and heard the *Examinations*, and told the *Lords*, That the said *Richard* had related otherwise to the *Commons* the day before, which the said *Richard* deny'd. Then all the *Commons* came, and justify'd it again, and thereupon the said *Richard Love* confessed it, and on their *Demands* was committed.

In the 10 *Rich. 2.* when the *Commons* had Impeached the *Lord Chancellor*, they were present at his Answer, and so often reply'd, and enforced his Oath against him, and required him to be committed, and so he was before Judgment.

roll. 72
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If the *Commons* do only complain, and do neither impeach the Party in Writing, nor by Word of Mouth in open House, nor demand Trial to be in their Presence: in these Cases it is in the Election of the *Lords*, Whether the *Commons* shall be present, or not.

Issu-

Issuing of *Quo Warranto's* out of the Court of *King's Bench*, Court of *Exchequer*, or any Court, against *Boroughs*, that anciently or recently sent *Burgesses* to *Parliament*, to shew cause, why they sent *Burgesses* of *Parliament*, and all the Proceedings thereupon, are *Contra non Judice*, illegal and voids. And the Right of sending *Burgesses* to the *Parliament*, is questionable in *Parliament* only; and the Occasioners, Procurers, and Judges in such *Quo Warranto's* and Proceedings, are punishable, as in *Parliament* shall be thought consonant to Law and Justice.

Selden's
Judicature
118.

Where the Articles against the *Delinquents* are *ex Parte Domini Regis*, there the *Commons* cannot reply, nor demand Judgment: for the Suit is the *King's*, and not theirs.

Id. 39.

In *Trewinnard's Case*, *Dyer* 60, & 61. The Privilege of the *Commons* is termed the *Privilege of Parliament*; and the Judgment given

given in that Case by the *House of Commons*, is there said to be, *The Judgment of the most High Court of Parliament*. Sir Robert Atkyns's Argument 35. which proves, they are not without a Judicial Power.

The *King* cannot take notice of *Id. 53.* what is done in the *Commons House*, or deliver'd to them, but by the House it self: and that is one of the Laws and Customs of *Parliament*.

In 31 *Hen. 6.* when the *Com- Id. 55.* mons requested the *King* and *Lords* to restore their *Speaker* to them, &c. The *Judges* being demanded of their Counsel therein; after mature deliberation, they answer'd, *It was not their part to judge of the Parliament, which may judge of the Law.*

The Reason, to judge of the *Ibid.* Law, signifies that they can judge whether a Law be good, or not; in order to approve it, and to enact it, or to repeal a Law.

Ibid.

In 1621. the *House of Commons* made a Protestation against all Impeachments, other than in the House, for any thing there said or done.

Id. 58.

Rush. Coll.

Vol. 1.

f. 663.

It was said by Mr. Justice Crook, That regularly a *Parliament-man* cannot be compelled, out of *Parliament* to answer Things done in *Parliament* in a *Parliamentary Course*. If it be done in a *Parliamentary Course*, what Occasion can there be to answer for it? But who shall judge what is a *Parliamentary Course*, but a *Parliament*? not Judges of the Common Law; for the *Parliamentary Course* differs from the Rules of the Common Law.

Sir Simon

d'Ewes

Jour. 347.

Col. 2.

27 Eliz. 1584. Ordered, That the Serjeant of this House do forthwith go to the Common Pleas Bar, and charge the Recorder, then pleading there, to make his present Repair unto this House for his Attendance.

Id. 367.

Col. 1.

Eodem Anno, John Bland a Currier,

rier, for making dishonourable Reflections on the *House of Commons*, brought to the Bar, and pardoned upon his Submission, paying twenty shillings Fee to the *Serjeant*, and taking the Oath of Supremacy.

Eodem An. A Warrant for a Writ ^{Id. 368.} of Priviledge awarded for setting ^{Col. 1.} at Liberty *John Pepler*, Servant to *Sir Philip Sidney* a Member of this House, now Prisoner for Debt in the *Compter* in *London*.

28, 29 *Eliz.* 1586. Resolved ^{Id. 397.} by the whole Body of the House, ^{Col. 1.} That the discussing and adjudging of Differences about Elections, only belonged to the said House: That tho' the Lord Chancellor and Judges were competent Judges in their proper Courts, yet they were not in Parliament.

31 *Eliz.* 1588. *Thomas Drury* ^{Id. 451.} committed to the *Serjeant's* Custody, brought to the Bar, and discharged, paying his Fees; for speaking dishonourably of the ^{Col. 1.}

Proceedings of the House.

Id. 283.
Col. 1.

23 *Eliz.* 1580. A Member of the House stood Indicted of Felony. Adjudged, That he ought to remain of the House till he were Convicted: for it may be any man's case, who is guiltless, to be Accused, and thereupon Indicted of Felony, or a like Crime.

*Petyr's
Miscel.*

Parl 16, 18

18 *Eliz.* 1575. *Edward Smalley* was upon the Question adjudged by the House to be Guilty of Contempt, and abusing the House by fraudulent Practise of procuring himself to be Arrested upon Execution, of his own Assent and Intention, to be discharged as well of his Imprisonment, as of the said Execution. And *Matthew Kirtleton* adjudged Guilty of Confederacy with the said *Smalley*. Whereupon they were both ordered to be committed to the *Tower*. And the said *Smalley* to remain there for a Month, and after, till he gave sufficient Assurance for payment of a hundred pounds to the

the Creditor , and forty shillings for the *Serjeant's Fees*.

4 *Ed. 6. Criketoft*, for the confederating in the Escape of one *Floud*, committed to the *Tower*, and afterwards discharged paying his Fees.

1 *Jac. 1. Bryan Tash*, a Yeoman of his Majesties Guard, for keeping the Door of the *Lobby* of the *Upper House* against several Members of the *House of Commons*, brought to the Bar of the House, and upon his Submission, and Confession of his Fault, dismissed, paying the ordinary Fees to the *Clerk* and *Serjeant*.

20 *Jac. 1. Dr. Harris*, for misbehaving himself in preaching, and otherwise with respect to Election of Members of *Parliament*; call'd to the Bar as a *Delinquent*, and admonish'd to confess his Fault there, and in the Country, and in the Pulpit of his Parish Church.

3 *Car. 1. Mr. Burgeß* a Minister, for abusing his Function in

the Duty of Catechising, &c. sent for by a *Messenger*, committed to the *Tower*, and upon humble Submission deliver'd.

Id. 105,
106.

In the same *Parliament*, Sir *William Wray*, Mr. *Langton*, Mr. *John Trelawny*, and Mr. *Edward Trelawny*, Deputy Lieutenants for *Cornwal*, for assuming to themselves a Power to make *Knights of the Shire*, defaming such as stood to be chosen, sending for the *Train'd Bands*, menacing the Country, &c. were committed, some to the *Tower*, some to the *Serjeant*, till they made a Submission and Recognition in the *House*, and in the Country.

Id. 106,
107.

In the same, One *Levet*, for peremptorily exercising a *Patent* in Time of Prorogation, which was adjudg'd a Grievance by the *House* in the last Session, order'd to be sent for by the *Serjeant at Arms*.

C H A P. VII.

*Power of Parliament over
their own Members.*

THE Freedom of Speech and *Scobel 72.*
 Debates be an undoubted
 Priviledge of the House; yet what-
 soever is spoken in the House, is
 subject to the Censure of the
 House; and where they find cause,
 Offences of this kind have been
 severely punish'd; by Calling the
 Persons to the Bar, to make Sub-
 mission; Committing him to the
Tower, (the usual Prison to which
 the *Commons* do send *Delinquents*)
 expelling the House, disabling him
 to be a Member during that *Par-*
liament, and sometime of any fu-
 ture *Parliament*.

17 *Maij* 1572. Upon sundry
 Motions made by divers Members
 of the House, it was ordered, *That*
 Ibid. Vide
 d'Ewts
 Jour. 212.
 Vid. Peyts
 Miscell.
 Parl. 12,
 13, &c.

Arthur Hall Esq; for sundry Speeches used by him in the House, and abroad, shou'd be warned by the Serjeant to be at the House on Monday following, and at the Bar, to answer Matters charged against him: and all such Persons as had noted his Words, either in the House, or abroad, were forthwith to meet, and set down the same words in writing, and deliver the same to the Speaker. On Monday Mr. Hall was brought to the Bar by the Serjeant, was charged with several Articles, and confessed his Folly, and humbly submitted himself to the House, and was remitted.

Id 73.
Vide Sir
Simon
d'Ewes
Journal,
244. Col. 1.

8 Febr. 1585. Peter Wentworth Esq, one of the *Burgesses* for *Tregony* in the County of *Cornwal*, was, for violence and wicked words uttered by him in the House touching the Queen, sequester'd: and being brought to the Bar by the *Serjeant* (to whom he was committed) received this Judgment

ment by the Mouth of the Speaker, That he shou'd be committed close Prisoner to the Tower, till the House take further Consideration concerning him.

4 Febr. 1580. 23 Eliz. Com-
 plaint was made in the House a-
 gainst *Arthur Hall* Esq; (spoken of
 before) who had caus'd a Book to
 be printed, where were published
 the Conferences of the House; and
 in it was contained Matter of Re-
 proach against some particular
 Members of the House, derogato-
 ry to the General Authority, Pow-
 er, and State of the House, and
 prejudicial to the Validity of the
 Proceedings of the same. The
 Matter was referr'd to a *Commit-*
tee to examine; and upon Report
 thereof, and bringing Mr. *Hall* to
 the Bar several Times to answer,
 he was sentenced by the House to
 be committed to the *Tower* (as the
 Prison to this House) there to re-
 main for the space of Six months,
 and so much longer, as until he
 shou'd

Id 74.75.

Vide

Sir Simon

d'Ewes

Jour. 296,

297, 298.

Vid. Petyts

Miscell.

Parl. a. p. 20

ad p. 63.

shou'd himself willingly make a Retraction of the said Book, to the satisfaction of the House, or of such Order as the House shou'd make during that Session. *That the said Arthur Hall shou'd be fined to the Queen Five hundred pounds for his said Offence; That he shou'd be presently severed and cut off from being a Member of this House, during this Parliament, and a Writ to issue for Election of a new Burgefs for the Borough of Grantham in his stead; That the said Book shou'd be deemed and adjudged false and Erroneous.* Thereupon the said Mr. Hall was brought to the Bar, to whom Mr. Speaker, in the Name of the whole House, pronounced the said Judgment, in Form aforesaid, and the Serjeant was commanded to take Charge of him, and to convey him to the Tower, and deliver him to the Lieutenant of the Tower, by Warrant of this House, to be signed by the Speaker.

It

It appeareth by the *Journal* 21 *Ibid.*
Nov. 1586. That he was disabled
 for ever to serve in *Parliament*.

17 *Dec.* 1584. 27 *Eliz.* A Bill *Id.* 76.
 against *Jesuits* and *Seminary* *Vide Sir*
Priests pass't upon the *Question.* *Simon*
Dr. Parry only gave a Negative, *d'Ewes*
 and after inveighed in violent *Four.* 340,
 Speeches against the whole Bill; *341, 342.*
 affirming it to favour of Treasons,
 to be full of Blood, Danger, De-
 spair, and Terror or Dread to the
 English Subjects of this Realm, our
 Brethren, Uncles, and Kinsfolks.
 Upon which he was sequestred
 from the House into the outer
 Room, into the Hands of the *Ser-*
jeant, and not to confer with any,
 while the House was in Debate of
 that Business. Afterward he was
 brought to the Bar, and there
 kneeling, he was told by the Spea-
 ker, If he thought fit, the House
 was content to hear his Reasons;
 but he refusing, was committed to
 the *Serjeant's Ward*. The next
 day he was brought to the Bar,
 and

and kneeling, confessed he had unduly behaved himself, and had rashly and unadvisedly uttered those Speeches he had used, and was with all his heart very sorry for it; alledging withal, he had never been of the House till that Session, and so could not so well know the Orders of the House, as he shou'd do, and that he would not henceforth willingly offend the House, nor any one man in it, and so humbly prayed their good Favour toward him. Whereupon being again sequestred out of the House, after some Arguments and Debates it was resolved, upon this Acknowledgment of his Fault, and his humble Submission, he shou'd be received into this House again, as a Member thereof, and take his Place, as before, so that he would still afterward behave himself in good sort, as he ought to do: and thereupon being call'd again to the Bar, and there kneeling, and directly reiterating his former Confession

feſſion of his Fault, and humble Submiſſion, with promiſe of better Demeanor, he was admitted.

18 Febr. 1584. 27 Eliz. Upon ^{Sir Simon d'Ewes Journal} a Motion by Mr. Diggs, That the ſame Dr. Parry, a late unworthy 352. Col. 2. Member of this Houſe, and now Priſoner in the Tower, hath ſince his Submiſſion and Reconcilement ſo miſ-behaved himſelf as deſerveth the ſaid Imprisonment: Reſolved by the Houſe, *That he be diſabled to be any longer a Member of this Houſe, and that a Warrant be directed for chooſing another Burgeſſ in his ſtead.*

18 Jac. I. Sir Giles Mompelſſon, for being a Monopolift, and for other great and inſufferable Crimes by him committed, to the Abufe of his Maſteſty, and grievous Oppreſſion of the Subjects; turn'd out of the Houſe, committed to the Tower, and after impeached before the Lords, who gave Judgment upon him.

1. *To be degraded of the Order of Knighthood.* ^{Petyt's Miscel. 1}
2. *To* ^{Parl. 91, 92}

Power of Parliament

2. To stand perpetually in the degree of a person Outlawed for Misdemeanors and Trespases.
3. His Testimony never to be received in any Court, nor to be of any Inquisition or Jury.
4. To be excepted out of all General Pardons.
5. That he should be imprisoned during his Life.
6. Not to approach within twelve miles of the Courts of the King, or Prince, not at the King's High Court usually held at Westminster.
7. That the King should have the profits of his Land for Life, and all his Goods and Chattels, and should be fined at 10000 l.
8. He was also disabled to hold or receive any Office under the King, or for the Commonwealth.
9. And lastly, Ever to be held an infamous Person.

19 Jan. 1. Sir John Bennet, for ^{Id. 92.} receiving Bribes, &c. Ordered by the Commons House to be safely kept by the Sheriffs of London; to be put out, and no longer continue a Member of the House; and a Warrant for a Writ for a new choice.

In the same Parliament, Sir Robert Floyd, for being a Projector of a Patent for a Monopoly; resolved *una voce*, That he was a Person unworthy to continue a Member of this House, and adjudged presently to be put out.

3 Car. 1. Mr. John Barbour ^{Id. 94, 95.} Recorder of Wells, for subscribing a Warrant for the Quartering of Soldiers; suspended the House, and sequestred, till the Pleasure of the House be known.

13 Febr. 1606. Upon a Report ^{Id. 77, 78,} made in the House of the Remem- ^{79.}brances formerly set down of the Particulars of a Conference; the Speaker offering to read the Paper, and being interrupted by some Motions,

tions, and Disputes, *Whether they should be read one by one, and so debated, or all at once* : in that Difference, one of the *Knights* for *Buckinghamshire*, with a loud Voice (not standing up bare-headed, as the Order is) pressed to have them read. The House observing his earnestness, and manner of Sitting and Calling, for Order's sake , urged him to stand up, and speak ; He stood up, and pretending to offer some Reasons, fell into an Invective against the *Scots*, much distasting the House ; yet out of a common Care to expedite the weighty Business then in hand, his Speech was neglected, without Tax or Censure. But on *Monday* following it was remembred, and his words of Offence recited in particular : the Gentleman being absent, was sent for by the *Serjeant*. The *Serjeant* having brought the Offender, it was moved he might be heard at the Bar, which was assented to, and after he had spoken, he was commanded

manded to retire; and not long after was call'd in again to the Bar, where kneeling, Mr. *Speaker* acquainted him, Since the Offence was so apparently heinous, the House did not hold it fit that any Particulars shou'd be named, or to give any Reason of their Judgment; but the Order was, *That he shou'd be carry'd to the Prison of the Tower, and there remain, during the Pleasure of the House; and that he should be dismiss'd from his Place of Knight of the Shire for Bucks, and a new Writ to issue for a new Choice.*

15 Febr. 18 Jac. 1. A Bill being ^{Id. 79.} read the second Time, for the better Observation of the Sabbath, one of the Members made an Invective against it, and something which seem'd to reflect on a Member of the House, who presented it, as favouring of a Puritan, and factious Spirit; Exceptions were taken at the Words. After he had explained himself, he was ordered

H to

to withdraw out of the House ; and Debate being had, he was call'd to the Bar, and upon his Knees he received the Judgment of the House pronounced by the Speaker, *That he shou'd be discharged from the Service of the House ; with an Intimation that his Judgment was very merciful , for that the House might, for so exorbitant an Offence, have imprison'd , and further punish'd him.*

Id. 80.

3 Apr. 1604. In a Debate upon a Bill, a Member of the House utter'd some Speeches highly distast- ing the House ; but no Notice was taken of it till the Bill was com- mitted : and then the Words be- ing repeated, he was call'd to the Bar, where he made his Excuse , and was pardon'd.

Ibid.

26 Apr. 1641. Great Offence was taken by the House at Words spoken by Mr. J. H. He was first heard to explain himself, and then commanded to withdraw; and was call'd to the Bar, and suspended the House,

House, during that Session of Parliament.

27 Maij 1641. A Paper was brought in, containing words spoken by Mr. Taylor a Member of the House, concerning the Passing the Bill of Attainder of the Earl of *Strafford*: who being heard to explain himself, and then commanded to withdraw; after some Debate in the House, it was resolved, *That he shou'd be expell'd the House, be made incapable of ever being a Member of this House, and shou'd forthwith be committed Prisoner to the Tower, there to remain, during the Pleasure of the House, and to make an acknowledgment of his Offence, both at the Bar and at Windsor publickly.* And he was call'd to the Bar, and there kneeling, Mr. Speaker pronounced the Sentence accordingly.

13 Maij, 12 Jac. 1. Complaint was made, that some Indignities was offer'd to Sir R. Owen, when he was in the Chair at the Committee

tee (about the Bill for the due Observation of the Sabbath Day) by Sir *W. H.* who told him, *He was Partial*; and by Sir *R. K.* who took him by the hand, and told him, *He would pull him out of the Chair, that he should put no more Tricks upon the House.* Sir *W. H.* being present, made an Acknowledgment of his Error, which upon the Question was taken for a good Satisfaction. Sir *R. K.* was ordered by the House to Acknowledge his Error at the Bar.

Ibid.

19 Jac. 1. Some Speeches passing in the House privately between two of the Members, and some Offence taken, which seems was not intended to be given: one of them in going down the *Parliament-stairs*, struck the other; who thereupon catch'd at a Sword in his Mans hand to strike with it. Upon Complaint made of it to the House, they were both order'd to attend the House: being come, he who gave the Blow was call'd in, and

and standing (not at the Bar, but) by the Bar, was examin'd by Mr. Speaker, confessed the giving the Blow, insisted on the Provocation, and withdrew: The other was also call'd in to relate the Truth. After he had made the Relation, and was likewise withdrawn, and Testimony given by a Member of the House, who heard the words; the House proceeded to Sentence against Mr. C. who struck the blow. He being brought to the Bar, there on his knees he received Judgment, which was pronounced by the Speaker, *That he should be committed to the Tower, during the Pleasure of the House.*

1626. Mr. Moor sent to the *Nelson's*
Tower for speaking out of Season. *Introducti-*

Novemb. 1641. Ordered, *That* ^{on 61.}
Mr. Fitz-Williams Conisby shall be ^{2 Nelson}
expell'd this House, he being a Mono- ^{513.}
polist, and that the Speaker issue out
a Warrant to the Clerk of the Crown
for a Writ for a new Election for a

Member to serve for the County of Hertford in his Place.

Id. 596.

Mr. *Hugh Benson* a Member of the House, having granted many Protections for Money, taking for some sixteen, seventeen, forty shillings, and twenty for ten shillings a piece. Resolved upon the Question, *That Mr. Hugh Benson is unworthy and unfit to be a Member of this House, and shall sit no longer as a Member of this House. That he be forthwith sent for as a Delinquent, by the Serjeant at Arms attending on this House.*

Id. 710.

Mr. *Jervase Hollis* expelled the House for a Speech (made with great strength of Reason and Courage, but more Heat than the Times would bear) was restored to his Place, to sit as a Member of the House of Commons.

Id 272

Sir *William Widdrington* and Sir *Herbert Price* sent to the Tower for bringing in Candles against the Desire of the House.

Sir *Simon*
a' *Ewes*
Four. 309.
Col. 2.

23 Eliz. 1580. Order'd and Resolved

solved by the House, *That every Knight for the Shire that hath been absent this whole Session of Parliament, without Excuse allowed by this House, shall have a Fine of Twenty pounds set upon him to her Majesties Use; and upon every Citizen or Burgeß for the like, Ten pounds.*

1 Jac. I. 1603. Mr. Lawrence ^{Petters} Hide (pretending Business of his ^{Miscell.} Clients, &c.) made known to the House, that he would go out of Town, and so took his leave in open Audience, without the Assent or Leave of this House; which was taxed; and Mr. Speaker warranted to write to him. ^{Part. 147.}

It was also moved, and resol- ^{Id. 149.} ved, *That Mr. Speaker shou'd write another Letter to other Lawyers, being gone down in the same Circuit, where Mr. Lawrence Hide was, advising them to attend it.*

C H A P. VIII.

Concerning Elections of
Members.

5 R. 2. St. 2.
c 4.

ALL Persons and Commonalties who shall be Summon'd to the *Parliament*, shall come, as hath been accustomed of old time, and he that cometh not, having no reasonable Excuse, shall be amerced, and otherwise punish'd.

Arg. Parl. 4
Vide the
Form of
the Writ.
Sir Simon
d'Ewes
Jour. 37.

The King sendeth Writs to the *Sheriffs* of every *Shire*, to admonish the whole *Shire* to choose two *Knights of the Parliament* in the Name of the *Shire*, to hear, and reason, and to give their Advice and Consult in the Name of the *Shire*, and to be present at the day.

Hakewel
47.
Vid. Cromp-
ton's Ju-
ris. 3.

At every County, after the Delivery of the *Parliament-Writ* to the *Sheriffs*, Proclamation shall be made

made in the full County, of the Day and Place of the *Parliament*; and that all Men shall attend for the Election of the *Knights* for the same County for the *Parliament*.

Where the *Parliament Writ* ^{Arc Parl. 22.} speaks *de qualibet Civitate Comitatus illius*, this intended where ^{Vid. Crompt.} the City is not a County in it self. If it be, the Writ shall be directed to them, &c. as it is to *Sheriffs* of other Countries.

28 Eliz. 1586. Resolved, That the House of Commons are the only ^{Sir Simon d'Ewes} competent Judges concerning *Electi-* ^{Jour. 396, 397.} ons, which are duly made, which not.

18 Jac. 1. The Mayor of *Win-* ^{Pitt's} *chelsey*, for mis-behaving himself ^{Miscell.} at the Election of *Parliament-men* ^{Parl. 111.} for their Town, and making a false Return, ordered to be committed to the *Serjeant*, and to make a Submission at the Bar, and an Acknowledgment in the Town, before the new Election.

20 Jac. 1. The Mayor of *Arun-* ^{Id. 112.} *del,*

del, for mis-behaving himself in the Election, by putting the Town to a great deal of Charges, not giving a due and general Warning, and packing a number of Electors; ordered to be sent for, and adjudged to pay the Charge to be set down by three of the Members.

Arg. Parl. 4.

Smith's

Common-

wealtb, 76.

Likewise to every City and Town, which of ancient Time hath been wont to find *Burgesses* of the *Parliament*, so to make Election, that they might be present there at the first day of the *Parliament*.

4 Inst. 10.

2 Inst. 169.

In 7 *Hen. 4.* it is enacted, *That Elections should be freely and indifferently made, notwithstanding any Prayer or Commandment to the contrary, sine Præce, without any Prayer or Gift, and sine Præcepto, without Commandment of the King by Writ, or otherwise, or of any other.*

4 Inst. 4.

The King, *de advisamento Concilii*, resolving to have a *Parliament*, doth out of the *Court of Chancery* send out Writs of *Summons*,
at

at the least Forty days before the Parliament begin.

The third Estate is the Commons of the Realm, whereof there be *Knights of the Shires, or Counties; Citizens of Cities, and Burghesses of Boroughs.* All which are respectively elected by the *Shires or Counties, Cities and Boroughs*, by Force of the *King's Writ, ex debito Justitiæ*, and none of them ought to be omitted.

⁴ Inst. 1.
Crompton's
Juris. 2 b.

These Represent all the *Commons* Ibid. of the whole Realm, are trusted for them, and are in Number at this Time 493. Now above 500.

Whosoever is not a *Lord* of ^{Id. 2.} *Parliament*, and of the *Lord's House*, is of the *House of Commons*, either in Person, or by Representation, partly *coagmentativè*, and partly *representativè*.

Every Member of the House ^{Id. 3.} being a Counsellor, shou'd have three Properties; First, to be without Malice or Envy. Secondly, to be constant and inflexible. Thirdly,

Thirdly, to be of ripe and perfect memory, as appeareth in a *Parliament Roll*, Rot. *Parl.* 3 H. 6. n. 3.

Arc. Parl. 5.
Smyth's
Common-
wealth 77.

The *Knights of the Shire* are chosen by all the *Gentlemen and Yeoman* (i. e. *Freeholders*) of the *Shire*, present at the Day assign'd for the Election: The Voice of any absent can be counted for none.

Concerning the Writs for Summoning the *Knights and Burgeses*; and the Return of the Sheriff, *Vide Crompton's Juris.* 1, 2.

Arc. Parl. 3.

Every English-man is intended to be there present, either in Person, or by Procuration and Attorney: and the Consent of the *Parliament* is taken to be every mans Consent.

Id. 10.
Smyth's
Common-
wealth 77.

These meeting at one Day, the two have most of their Voices, are chosen *Knights of the Shire* for that *Parliament*. Likewise by the Plurality of the Voices of the *Citizens and Burgeses*, the *Burgeses* are elected.

The

The Election ought to be in full 4 Inst. 48.
County, between Eight and Nine
(says the Statute of 23 Hen. 6.
c. 15.) No Election can be made
of any *Knight of the Shire* but be-
tween Eight and Eleven of the
Clock in the Forenoon, says the
Lord *Coke*. But if the Election be
begun within the Time, and cannot
be determined within those hours,
the Election may be made after.

Any Election or Voices given, Id. 49.
before the Precept be read and
published, are void, and of no
Force: for the same Electors, after
the Precept read and published,
may make a new Election, and al-
ter their Voices, *Secundum Legem
& Consuetudinem Parliamenti*.

For the Election of the *Knights*, Id. 48.
if the Party or Freeholders demand
the *Poll*, the *Sheriff* cannot deny
the Scrutiny, for he cannot discern
who be Freeholders by the view:
and tho' the Party would wave the
Poll, yet the *Sheriff* must proceed
in the Scrutiny.

The

St. 8 H. 6. c. 7. 7 H. 4. c. 1. 23 H. 6. c. 15. Vid. *Crompton's Jurisf.* The *Knights* shall be returned into *Chancery* by Indenture seal'd betwixt the Sheriff and the Choo- sers of *Knights for the Parliament.*

3. Jan. 1641. In the Case of Mr. Downes return'd. a Burgeß for *Arun- del*, Order'd, That he be presently sworn and admitted as a Member into the House, until such Time as the Election be determin'd.

Sir Simon d'Ewes *Jour.* 430, 622. & *passim.* A Burgeßs elected for two se- veral *Boroughs* may choose for which he will serve.

21 Jac. 1. *Edward Ingry* Under- sheriff of *Cambridgeshire*, for re- fusing the Poll (declaring that Sir *Thomas Steward* promised to de- fend him against Sir *John Cutts*) was brought to the Bar, and kneel- ing upon his Knees, adjudg'd to be committed to the *Serjeant's Cu- stody*, and to make a Submission at the Bar, and at the next *Quar- ter-Sessions*, and to acknowledge his Faults.

Id. 113. to 120. 3 Car. 1. *Thomson* Sheriff of *Tork*, for his hasty and precipitate Judg-

Judgment of an Election, and denying the *Poll*, being requir'd; and Alderman *Henlow* for advising and abetting the same; adjudged to stand committed to the *Serjeant* during Pleasure, to acknowledge their Offences at the Bar, to pay all due Fees, to defray the Charge of Witnesses, to be assessed by four of the Committee, to acknowledge their Faults on their Knees at the Bar, and read a Submission.

After the *Precept* of the *Sheriff* Id. 49. directed to the *City* or *Borough* for making of Election; there ought, *secundum Legem & Consuetudinem Parliamenti*, to be given a convenient Time for the Day of Election, and sufficient Warning given to the *Citizens* and *Burgesses* that have Voices, that they may be present: otherwise the Election is not good, unless such as have Voices do take Notice of themselves, and be present at the Election.

When there is a Corporation

made in Ireland.

Hobart 13.

*Dungan-
non's Case*

made by Charter ; and by the same an Ordinance, that the *Provost* and *Burgeses* only shall choose, &c. The Law shall vest this Priviledge in the whole Corporation in point of Interest, tho' the Execution of it be committed to some Persons, Members of the same Corporation.

- 4 Inst. 49. The *King* cannot grant a Charter of Exemption to any man ; to be freed from Election of *Knight*, *Citizen*, or *Burges* of *Parliament* (as he may do of some inferior Office or Places) because the Election of them ought to be free ; and his Attendance is for the Service of the whole Realm, and for the Benefit of the *King* and his People ; and the whole *Commonwealth* hath an Interest therein.

Sir Simon d'Ewes, 244. Col. 2. Vide contra Sir Simon d'Ewes
 18 Eliz. 1575. Resolved, That any Person being a Member of the House, and being either in Service of Ambassage, or else in Execution, or visited with Sicknesse, shall not in any wise be amoved from their Place

Place in this House, nor any other to be, during such Time of Service, Execution, or Sickneß, elected.

C H A P. IX.

Who may be Electors.

THE Choosers of the *Knights* St. 1 H. 5. c.
for the Parliament ought 1. 8 H. 6. c.
to be only of such Persons as are 7. 10 H. 6. c. 2.
resiant and dwelling within the
said Shire.

No Person shall be a Chooser of St. 8 H. 6. c.
the *Knights for the Parliament*, 7.
except he hath Freehold Lands or 33 H. 8. c.
Tenements within the same Coun- 1. in Ire- land.
ty, to the value of Forty shillings
per Annum at the least, above all
Charges.

The *Sheriff* hath Power given St. 8 H. 6. c. 7.
him by the said Statute to examine
upon Oath every such Chooser,
how much he may expend by the
I year,

*Crompt.
Juris. 3.*

year, if he doubt the value of it.

4 Inst. 4. 5. In many Cases Multitudes are bound by *Acts of Parliament*, which are not Parties to the Elections of *Knights, Citizens, and Burgeſſes*: as all they that have no Freehold, or have Freehold in ancient *Demeſne*, and all Women having Freehold, or no Freehold, and Men within the Age of One and twenty years, &c.

*St. 33 H. 8.
c. 1. Ireland*

Every Inhabitant chooſing or electing in any other manner (than is preſcribed by the Statute) to forfeit an hundred ſhillings, half to the *King*, and half to him that will ſue for it.

*Arc. Parl.
25.*

If any man keeps a Houſhold in one *County*, and remains in Service with another Family in another *County*, yet he may be at the chooſing of *Knights of the Shire* where he keeps his Family; for it ſhall be ſaid in Law a Dwelling in either of thoſe *Counties*.

*Crompton's
Juris. 3. b.*

*St. 23 H. 6.
c. 15.*

*Vid Crompton's
Jur. 3. b. 4. a.*

If the *Mayor* and *Bayliffs* (or other *Officer*, where no *Mayor* is) ſhall

shall return other than those which be chosen by the *Citizens* and *Burgeses* of the *Cities* or *Boroughs* where such Elections be, shall incur and forfeit to the *King* Forty pounds; and moreover, shall forfeit to every person hereafter chosen *Citizen* or *Burges* to come to *Parliament*, and not by the same *Mayor* or *Bayliff*, &c. return'd; or to any other Person that will sue for it, Forty pounds.

C H A P. X.

Who may be Elected.

5 Eliz. c. 1. **N**O Knight, Citizen, or Burges can sit in *Parliament*, before he hath taken the Oath of Supremacy, and since the 7 Jac. 1. the Oath of Allegiance.

4 Inst. 48.
Sir Simon
d'Ewes
Jour. 39,
40.

4 Inst. 10.

Because the words of the *Writ* for Election of *Knights*, &c. were *duos Milites gladiis cinctos*, &c. it required an *Act* of Parliament, that notable *Esquires* might be eligible.

St. 23 H. 6.

C. 15.

Therefore the Statute says, *The Knights of the Shires for the Parliament must be notable Knights, or such Esquires, or Gentlemen, born of the same County, as be able to be Knights.*

St. 18 Ed.

4. c. 2. in
Ireland.

Any man may be chosen *Knight*, *Citizen*, or *Burges*, tho' he be not dwelling within the same.

St. 33 H. 8.

c. 1. in Ire-
land.

Every *Knight*, *Citizen*, and *Burges* shall be resident and dwelling within the *Counties*, *Cities*, and *Towns*. Every *Knight*, *Citizen*, or *Burges* taking it upon him, and not chosen (in the manner prescribed by the *Act* of Parliament) to forfeit an hundred pounds.

Moor 10.

551 n. 741

Si home n'esteant Inhabitant, ne free del un Borough, poit Eslier, sil voit seruer à leur Election, ou nemy, pur le Borough.

If

If a man be not an Inhabitant , nor free of a *Borough*, he may choose if he will serve at their Election, or not, for the *Borough*.

By the Statute none ought to be chosen a *Burges* of a *Town*, in which he doth not inhabit ; but the usage of *Parliament* is contrary. But if Information be brought upon the said Statute against such a *Burges*, I think that the Statute is a good Warrant for us to give Judgment against him, by *Whitlock*.

Rush. Coll.
Vol. 1.
689.

The *King* cannot grant a Charter of Exemption to any Man to be freed from Election of *Knight*, *Citizen*, or *Burges* of the *Parliament*.

Townsh. Coll.
63, 64.
Vide *John Smiths Ca.*

A Person Outlawed in a Personal Cause may be a *Burges*.

If Exception be taken to such an Election, and an Outlawry alleged to disenable him, the Statute will disenable most of this House, for they ought to be *Burges* resident.

Sir Simon d'Ewes Jour. 48. Col. 2.
480. Col. 1.
Vide *Sir Simon d'Ewes Jour.* 481. Col. 2.

Sir Simon
d'Ewes
Journal
482.Col.1

Tho' the *Common Law* doth disable the Party, yet the Privilege of the House being urged, that prevaieth over the Law.

Sir Simon
d'Ewes
Jour. 482.
Col.1.

A man Attainted, Outlawed, or Excommunicated, or not lawfully elected, if he be returned, out of all doubt is a lawful *Burgeß*.

4 Inst 46.

A *Knight Banneret*, being no *Lord of Parliament*, is eligible to be *Knight, Citizen*, or *Burgeß* of the *House of Commons*, being under the Degree of a *Baron*, who is the lowest Degree of the *Lord's House*.

Sir Simon
d'Ewes
Journal,
244.Col.2.

An *Earl's Son* may be a Member of the *House of Commons*.

One under the Age of One and twenty years is not eligible. Neither can any *Lord of Parliament* sit there till he be full One and twenty years.

Ibid.

An Alien cannot be elected of the *Parliament*, because he is not the *King's Liege Subject*: and so it is, albeit he be made *Denizon* by *Letters Patents, &c.* But if an Ali-

Who may be Elected.

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Alien be naturaliz'd by *Parliament*, then he is eligible to this, or any other Place of Judicature.

No Alien denizated ought to sit here, *per Sir Edward Coke.* *Petty's Miscel. Parl 175.*

Resolved upon the Question, *That the Election of Mr. Walter Steward*, being no natural born Subject, is void, and a Warrant to go for a new Writ. *Ibid.*

None of the *Judges of the Kings Bench*, or *Common Pleas*, or *Barons of the Exchequer*, that have Judicial Places, can be chosen *Knight, Citizen, or Burgeß of Parliament*, as it is now holden, because they are Assistants in the *Lord's House*. Yet read *Parl. Roll 31 H. 6.*

But any that have Judicial Places in other Courts *Ecclesiastical or Civil*, being no *Lords of Parliament*, are eligible. *Ibid.*

None of the *Clergy*, tho' he be of the lowest Order, is eligible to be *Knight, Citizen, or Burgeß of Parliament*, because they are of another Body, viz. of the *Convocation*. *Magr so. 783. n. 1083. 4 Inst. 47.*

Hakewel

59.

Vide Fox's

Book of
Martyrs

f.1639.

The Clergy of the *Convocation-
House* are no Part or Member of
the *Parliament*.

4 Inst.48.

A man Attainted of *Treason* or
Felony, &c. is not eligible. For
he ought to be *magis idoneus, dis-
cretus, & sufficiens*.

4 Inst.48.

Vide con-
tra Brook

Abridg.tit.

Parl.7.

Mayors and *Bayliffs* of *Towns*
Corporate are eligible.

Crompt.16.

At a *Parliament* holden 38 H.8.
it was admitted and accepted, *That*
if a Burgeſſ of Parliament be made
a Mayor of a Town, or have Judi-
cial Jurisdiction, or another is sick:
that theſe are *Causes ſufficient* to
chooſe others.

4 Inst.48.

Any of the *Profession* of the
Common Law, and which is in Pra-
ctiſe of the ſame, is eligible.

Ibid.

By ſpecial Order of the *House*
of *Commons* the *Attorney General* is
not eligible to be a Member of the
House of Commons.

Moor f.551
n.741.Vide Sir
S. d'Emes
Jour. 441.Col 2.442.
Col.1.

Egerton Solicitor la Roign fuit
command d'Attender en l'Upper
House, & attend 3 Jours, & apres
fuit eſlie Burgeſſ pur Reading. Et fuit

re-

Who may be Elected.

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reteign quia il fuit primes attendant en l'Upper Meson, devant que il fuit eslie un Member de lower Meson.

Egerton the Queen's Solicitor was commanded to attend in the Upper House, and did attend three days, & afterward was chosen Burgeß for Reading. And he was retainned, because he was first attendant in the Upper House, before he was chosen a Member of the Lower House.

Onslow Solicitor esteant Burgeß de lower Meson, fuit command Moorf. 551
n 741.
d'attend en upper. Le lower Meson Vide Sir
S. d'Erves
vient, & luy challenge, & demand Jour. 121.
Col. 1, 2.
d'aver luy; & fuit grant, quia il fuit
Member de lower Meson, devant que
il fuit command per Breve d'attend
en le upper.

Onslow the Solicitor being a Burgeß of the Lower House, was commanded to attend in the Upper. The Lower House come, and challenge him, and demand to have him; and it was granted, because he was a Member of the Lower House, before he was commanded

manded by Writ to serve in the
Upper.

Sir Simon
d'Ewes
Journ. 249.
Col. I.

18 Eliz. 1585. Concluded by
the House, *That Mr. Serjeant Jef-*
freys, being one of the Knights re-
turned for Suffex, may have Voice
or give his Attendance in this House;
as a Member of the same, notwith-
standing his Attendance in the Up-
per House, as one of the Queen's
Serjeants, for his Counsel there,
where he hath no Voice indeed, nor
is any Member of the same.

Id. 281.
Col. I.

23 Eliz. 1580. Popham Solicitor
General, upon demand made by the
House, was restored to them by the
Lords, because he was a Member
of the *House of Commons*, and they
possessed of him before he was So-
licitor, or had any Place of Atten-
dance in the *Upper House*.

Book of
Entr. 411.
Crompton's
Jur. 3. b.

No Sheriff shall be chosen for a
Knight of Parliament, nor for a
Burgesß.

4 Inst. 48.

1 Car. 1. The Sheriff of the
County of *Buckingham* was chosen
Knight for the County of *Norfolk*,
and

and returned into the *Chancery*; and had the Priviledge of *Parliament* allow'd to him, by the Judgment of the whole *House of Commons*.

Vide de hoc Pro & Con, Sir Simon d'Ewes *Journal* 38, 436, 624, 625.

I *Jac. I. Sess 2.* Sir John Peyton *Scobel* 96. Kt. returned the last Session, and since chosen Sheriff; Resolved upon the Question, *That he shall attend his Service here.*

The personal Residence and Attendance of *Sheriffs* is required within their Bailiwicks, during the Time of their Sheriffwick. Mr. *Walter Long*, being Sheriff of *Wilts*, was after chosen Citizen for *Bath*: and for that Offence was committed, and fined (*viz.* because he sate and served in *Parliament*.)

Sir *Andrew Noel* Kt, Sheriff of *Rutland*, returned himself Knight, and adjudged a void Return, and Sir Simon a Warrant ordered for a new Election. For (said Serjeant *Harris*)

Rush. Coll.
Vol. I. 684,
685.

Townsh. Coll.
185.
Vid. de hoc
Sir Simon
d'Ewes
Jour. 38.
Col. 1, 2. &
we 624. Col. 2.

we know, in Law, that a man cannot make an Indenture to himself; no more can he here, between himself and the County; for there are required two Persons. Yet Sir Edward Hobby said, That the House might well receive him, and vouched a Precedent, when the Bayliffs of Southwark returned themselves Burgeses, and were received.

4 Inst. 46. The Fee for the *Knight* of any County is, four shillings *per diem*, and every *Citizen* or *Burges* is to have two shillings *per diem*.

*Scobell 18.
Vide Sir
S. d'Ewes
Four. pas-
sim.*

Where one Person is chosen and returned to serve in several Places; it is in his Election to make his Choice in the House in his own Person, for what Place he will serve, and waive the other Election, so as a Writ may issue for a new Election, that the number may be full.

C H A P. XI.

*Returns of Sheriffs, &c.
And Amendments of
Returns.*

CONCERNING the Punishment of ^{St. 2.} *Sheriffs* for their Negligence ^{Stat. 2. c. 4.} in returning of *Writs*, or for leaving out of their Returns any *City* or *Borough*, which ought to send *Citizens* and *Burgesses*. See the Stat.

Every *Sheriff*, who doth not ^{St. 8 H. 6.} make true Return of Elections of ^{c. 7. 23 H.} *Knights*, *Citizens*, and *Burgesses*, ^{6 c. 15.} to come to *Parliament*, shall forfeit an hundred pounds to the ^{Vid. Crom-} *King*, and an hundred pounds to ^{ton's Ju-} the *Party* injured; and be impri- ^{ris. 3.} son'd for a Year without Bail or Mainprize. And every *Mayor* or *Magistrate* of a *Town* so offending, ^{Hakewell 48.} shall

shall pay Forty pounds to the *King*, and Forty pounds to the Party. This Action to be within Three months after the *Parliament* commenced, or by any other man who will.

Hakewel

49.
Vid. *Crompton's Juris.*
3.b.

If he so do not, and prosecute his Suit with Effect and without Fraud; any other man who will, may have the said Suit for the said hundred pounds, as the *Knight* had, and Costs of Suit also shall be awarded to the said *Knight*, or any other who will sue in his behalf.

Hakew. 51.

The *Sheriff* shall make a good Return of his *Writ*, and of every Return of the *Mayor* and *Bayliff*, or *Bayliffs*, where no *Mayor* is, to him made.

Townsh. Coll.
63.

The *Burgesses* of *Leskard* in *Cornwal* being elected, the *Town* refused to deliver up their Indenture to the *Sheriff*; but the Party elected made his Indenture, and deliver'd it to the *Clerk* of the *Crown*, who filed it with the rest of

and Amendments of Returns. 127

of the Indentures returned by the *Sheriff*, the *Sheriff* having endorsed it upon his *Writ*: but this Indenture was never executed by the *Sheriff*, nor returned: and yet this Return was held by the *Committees* to be good.

Jan. 1641. Ordered, That the ^{2 Nalson} High-Sheriff of the County of ^{870.} *Sussex*, who has return'd two Indentures for the Town of *Arundel*, shall be summon'd to appear here at the *Bar*, to amend his Return.

35 Eliz. 1592. It was said by ^{Sir Simon} the Speaker, No Return can be a- ^{d'Ewes} mended in this House: For the ^{Four. 490.} *Writ* and the Return are in ^{Col. 2.} *Chancery*, and must be amended there.

Every *Sheriff*, or other Officer, ^{St. 33 H. 8.} returning any *Knight*, *Citizen*, or ^{C. 1. in Ire-} *Burges* chosen in any other manner (than is prescribed in the Statute) to forfeit an hundred pounds.

If one be duly elected *Knight*, ^{4 Inst. 49.} *Citizen*, or *Burges*, and the *Sheriff* ^{It cites in} return another; the Return must ^{the Margin} be ^{Rot. Parl.} ^{5 H. 4. n. 38.}

be reformed and amended by the Sheriff, and he that is duly elected, must be inserted: for the Election in these Cases is the Foundation, and not the Return.

Scobell 115. 18 Jac. 1. The Sheriff of *Leicestershire* having returned Sir *Thomas Beaumont*; upon Report from the Committee for Elections that Sir *George Hastings* was duly chosen; the Sheriff was ordered to return Sir *George Hastings* to the Clerk of the Crown, and he to accept it, and file it.

Ibid. 21 Jac. 1. Upon Report from the Committee of Privileges, That in the Election of Mr. *John Maynard* for *Chippingham*, *John Maynard* was chosen, but by a Mistake *Charles* was afterward written instead of *John*: It was Resolved, The Return shou'd be amended, without a new Writ, and that the Bayliff shou'd do it, and not the Clerk of the Crown, and that it shou'd be sent down to the Bayliff in the Country, and he to Return *John Maynard Esq;* the first Burgeß. 1 Febr.

Returns of Sheriffs, &c. 129

1 Febr. 1640. It being Resolved, ^{Ibid.}
*That the Election of Mr. Erle for
 one of the Burgeſſes of Wareham ,
 is a good Election : Ordered, That
 the Officer, who was the Officer when
 the Return was made, or his Depu-
 ty, or the Electors, ſhou'd amend the
 Return. But the next day it was
 Ordered, That Edward Harbin,
 the late Mayor of Wareham's De-
 puty, ſhou'd come to the Bar of the
 Houſe, and amend the Return.*

20 Febr. 1640. The Bayliſſ of ^{Ida 16.}
*Midhurſt in Suffex came to the
 Bar (being ſent for by Order of
 the Houſe) and amended one of
 the Indentures of Return of Bur-
 geſſes for that Town, and the other
 was taken off the File.*

If a Sheriff ſhall return one for ^{Sir Simon}
 a Knight of the Shire, who was un- ^{d'Ewes}
 duly, or not at all elected; yet ^{Fourn. 283.}
 he that is ſo return'd, remains a ^{Col. 2.}
 Member of the Houſe till his Ele-
 ction be declared void.

C H A P. XII.

Election of the Speaker.

*Arc. Parl. 3.
Smyth's
Common-
wealth 75.*

THE *Speaker* is he that doth prefer and commend the Bills exhibited into the *Parliament*, and is the *Mouth* of the *Parliament*.

*4 Inst. 8.
Smyth's
Common-
wealth 75.*

It is true, the *Commons* are to choose their *Speaker*: but seeing that after their Choice the *King* may refuse him; for avoiding of expence of *Time* and *Contestati- on*, the Use is (as in the *Conje d'Eslier* of a *Bishop*) that the *King* doth name a discreet and learned *Man*, whom the *Commons* elect.

4 Inst. 8.

But without their Election no *Speaker* can be appointed for them, because he is their *Mouth*, and trusted by them, and so necessary, as the *House of Commons* cannot sit without him.

Election of the Speaker.

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And therefore a grievous Sick-
ness is a good Cause to remove the
Speaker, and choose another. So in
1 Hen. 4. Sir John Cheyny discharged:
and so William Starke. So in
15 Hen. 6. Sir John Tyrrel removed.

The first Day each Member is
called by his Name, every one an-
swering for what Place he serveth:
that done, they are willed to choose
their Speaker, who (tho' nomina-
ted by the King's Majesty) is to
be a Member of that House. Their
Election being made, he is pre-
sented by them to the King sitting
in Parliament. 35. So Sir Thomas
Gargrave 1 Eliz. So Christopher
Wray 13 Eliz. So Robert Bell 14
Eliz. So John Puckering 27 Eliz.
So George Snagg 31 Eliz. So Edw.
Coke 35 Eliz. So Tolverton 39 Eliz.
So John Crook 43 Eliz. So Sir
Thomas Crew 19 Jac. 1. So Sir
Heneage Finch 1 Car. 1 cum multis
aliis.

Modus te-
nend. Parl.

35.

Townsh. Coll.
174.

The *Speaker* ought to be religious, honest, grave, wise, faithful, and secret. These Vertues must concur in one Person able to supply that Place.

Elfyng. 154.

The long Use hath made it so material, that without the *King's* Commandment or Leave, they cannot choose their *Speaker*.

Id. 155.

Surely the Election of the *Speaker* was anciently free to the *Commons*, to choose whom they would of their own House: which appears in this, that the *King* never rejected any whom they made Choice of.

Vide contra Sir Simon d'Ewes *Journ.* 42. Col. 1. where he saith, That 28 Hen. 6. Sir John Popham was discharged by the King: and thereupon the *Commons* chose and presented William Tresham Esq; who made no Excuse.

Elfyng. 151.

Cook 12,

115.

Smyth's

Common-

wealth 79.

The Cause of Summons being declared by the *King* or *Chancellor*; the *Lord Chancellor* confers first with his Majesty, and then in his Name

Election of the Speaker.

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Name commands the *Commons* to assemble in their House, and to choose one of their Members to be their *Speaker*, and to present him to his Majesty on a Day certain.

Upon which the *Commons* shall presently assemble themselves in the *Lower House*, and he is to be a Member of their *Parliament*.

The *Commons* being thereupon assembled in their House; one of the *Commons* puts the rest in mind of their Charge given in the *Upper House*, touching the choosing of a *Speaker*; and then doth of himself commend one unto them, and desires their Opinions to be signified by their Affirmative, or Negative Voices: and if any Man stand up, and speak against him so named, alledging some Reason, he ought to name another.

Some Person (when the generality of Members are come, and sit) doth put the House in mind, That for their better proceeding in

Scobel 3.
Vid. Townsh.
174
Vide Sir
S. d'Erves
Four. pas-
sim.

the weighty Affairs they are come about, their first Work is to appoint a *Speaker*; and re-commends to the House some Person of Fitness and Ability for that Service and Dignity, which usually hath been one of the long Robe.

Scobel 3.

If more than one Person be named for *Speaker*, and it be doubtful, who is more generally chosen; sometime one of the Members standing in his Place, doth by Direction or Leave of the House, put a Question for determining the same, or the *Clerk* at the Board.

Scobel 4.

So it was in the first Session 1 Jac. 1. when Sir *Edward Philips* the *King's* Serjeant at Law was first named by Mr. Secretary *Herbert* as fit for that Place: and the names of others were mention'd, but the more general Voice run upon Sir *Edward Philips*; and a Question being put, he was by general Acclamation chosen *Speaker*.

Co. 12. 115.
Vid. Towns.

175.

Vid. Sir S.
d'Erwes,

Jour. passim

When the *Speaker* is chosen, he in his Place, where he first shall sit

Election of the Speaker.

135

sit down, shall disable himself, and shall pray, That they would proceed to a new Election.

When it appeareth who is chosen, after a good Pawse he standeth up, and sheweth what Abilities are required in a *Speaker*; and that there are divers among them well furnish'd with such Qualities, &c. disableth himself, and prayeth a new Choice to be made; which is commonly answered with a full Consent of Voices upon his Name.

Elfing. 153
Vid. Towns.
175
Vide Sir
S. d'Ewes
Four. passim

If the House generally give a Testimony of their Approbation, two of the Members (which for the most Part were of the Council, or chief Officers of the Court) going to the Gentleman named, and agreed to be *Speaker*, take him from his Place, and lead him unto the *Chair* (*Elfing* says, take him by the Arms, and lead him to the *Chair*) where being set, they return to their Places.

Elfing. 153
4 Inst 8.
Vid. Towns.
175
Vide Sir
S. d'Ewes
Four. passim

After a while he riseth, and un-

Elfing. 153

K 4

cover'd,

cover'd, with humble Thanks for their good Opinion of him, , promileth his willing Endeavors to do them Service.

Co. 12. 115.
4 Inst. 8.

After he is put into the *Chair*, then he shall pray them, That with their Favors, he may disable himself to the *King*, that so their Expectations may not be deceived.

Vid. Towns.

175.

Sir Simon

d'Ewes

Four passim

Then some (and commonly he that first spake) puts them in mind of the Day to present him, &c. *Elfing*. 153 So it was done by Sir William Knowls the Controller in the 43 *Eliz*.

Co. 12. 115.

Rush Coll.

480.

Smyth's

Common

wealth 80.

Two or three Days after the *Commons* shall present the *Speaker* in the *Upper House* to the *King*, where he shall disable himself again to the *King* and in most humble manner shall intreat the *King* to command them to choose a more sufficient man.

Elfing. 156

Vid. Towns.

175.

At the Day appointed, his Majesty sitting on his Royal Throne, and the *Lords* all in their Robes, the *Commons* are called in, who being

ing come, the *Speaker* is brought between two of them, with low Obeysance to the Bar, and so presented at the Bar to his Majesty.

The *Speaker* having made his Excuse, the *Lord Chancellor* confers with the *King*, and then telleth him, *That his Majesty doth approve the Commons Choice, and will not allow of his Excuse.* Then the *Speaker* proceeds to his *Speech*. But anciently he made first a *Protestation*; as you may read in *Elfing.* 159, 160.

After he is allowed by the *King*, Co. 12. 115. Vide Rush. Coll. 117. Vi. Smyths Commonwealth 80. then he shall make an Oration, and in the Conclusion, shall pray the four usual Petitions.

The *Speaker's Speech* is what it pleaseth himself (having no Direction at all from the *Commons* touching the same) making Petition to the *King* on behalf of the *Commons*, some in general words for all their ancient Priviledges, and some in particular. Elfing. 164

The *Protestation* of the *Speaker*

4 Inst. 8. consists of three Parts. First, *That*
 Vid. Towns. *the Commons in this Parliament*
 Coll. 4. & 54. *may have free Speech, as by Right*
 Rush. Coll. *and of Custom they have used, and*
 484. *all their ancient and just Privi-*
 Vid. El- *ledges and Liberties allow'd to*
 sing. 164. *them. Secondly, That in any*
Thing he shall deliver in the Name
of the Commons (if he shall com-
mit any Error) no Fault may be
arrested to the Commons, and that
he may resort again to the Commons
for declaration of their true In-
tent, and that his Error may be
pardoned. Thirdly, That as often
as necessity for his Majesties Service
and the Good of the Commonwealth
shall require, he may by Direction
of the House of Commons, have Ac-
cess to his Royal Person.

Modus te-

nend. Parl.

35.

Some add a Fourth, *That they*
may have Power to Correct any of
their own Members that are Offen-
ders.

Id. 62.

And some make a Fifth, *That the*
Members, their Servants, Chattels,
and Goods necessary, may be free from
all Arrests.

Tho'

Election of the Speaker.

039

Tho' the *Speaker* does (upon Sir R. At-
his being approv'd of by the *King*) kin's Argu-
make it his humble Petition to ment, &c.
have Liberty of Speech allow'd 33.
the *Commons*; from whence Dr.
Heylin and Sir *Robert Filmer*, and
others infer, That the *Commons*
enjoy that Liberty by the *King's*
Grace and Favour: yet they are
clearly answered by the words
that accompany that humble Peti-
tion, he prays *That they may be*
allowed that Freedom, as of Right
and Custom they have used, and all
their ancient, and just Priviledges,
and Liberties. So that this from
the *Speaker* is a Petition of
Right.

The *Speaker* having ended his *Elfyn. 165*
Oration, the *Lord Chancellor* con-
fers again with the *King*, and makes
Answer thereunto in his Majesties
Name, granting his Requests, &c.

That humble and modest way Sir R. At-
of the Peoples addressing to their kin's Argu-
Sovereign, either for the making ment 33.
Laws,

Laws, which has been very ancient, or for granting Priviledges (by the *Speaker* of the *Commons*) shews great Reverence, and becomes the Majesty of the *Prince* so to be addressed to: but let it not be made an Argument, that either the Laws thereupon made, or the Priviledges so allow'd, are precarious, and meerly of Favour, and may be refused them.

Co. 12. 115.
4 Inst. 10.

The Oration being answered by the *Lord Chancellor*, and his Petitions allow'd, the *Speaker* and the *Commons* shall depart to the *House of Commons*, where the *Speaker* in the Chair shall request the *Commons*, That inasmuch as they have chosen him for their Mouth, they would assist him, and favourably accept his Proceedings, which do proceed out of an unfeigned and sincere Heart to do them service.

Scobell 5.
Vide Sir
S. d'Ewes
Four. 43.
44.

The first Business in the House is ordinarily to read a Bill that was not pass't in the last Parliament

ment preceeding, or some new Bill, as in that of 10 Jac. 1. But on that Day, before that was done, there was a Motion made for Priviledge of Sir *Thomas Shirley*, who was chosen a Member to serve in that *Parliament*, but detained by an Arrest. Upon which a *Habeas Corpus* was awarded; and the Serjeant that Arrested him, and his Yeoman sent for, and a *Committee* for Elections and Priviledges chosen.

C H A P. XIII.

Business of the Speaker.

TH E *Mace* is not carried before the *Speaker*, until his Return, being presented to the *King*, and allow'd of.

Elfing. 153.

Modus tenend. Parl.

The *Speaker* sits in a *Chair* placed somewhat high, to be seen and heard

36.

Smith's Commonwealth, 84.

heard the better of all: the *Clerks* of the *House* sit before him in a lower Seat, who read Bills, &c.

Modus tenend. Parl.
37.
Smyth's Common-wealth 86.

The *Speaker's Office* is, when a Bill is read, as briefly as he may, to declare the Effects thereof to the House.

Hakewel
138, 139.
Sir Simon d'Ewes
Four. 43,
44.

That Day that the *Speaker*, being approved by the *King*, cometh down into the *Commons House* to take his Place, the Custom is, to read for that time only one Bill left unpast the last *Sessions*, and no more, to give him *Seisin*, as it were, of his Place.

Scobel 19:

1 *Jac.* 1. Sir *Edward Philips* was chosen *Speaker*, and the same Day (before he was presented to the *King*) he signed a Warrant as *Speaker*, by Command of the House, for Election of another Person in the Place of Sir *Francis Bacon*, being chosen in two Places.

Id. 20.

A general Order hath usually been made in the Beginning of the *Session*, to authorize the *Speaker* to give Warrants for new *Writs* in

Business of the Speaker.

143

in Case of Death of any Member, or of *double* Returns, where the Party makes his Choice openly in the House, during that *Session*.

Where such general Order is *Ibid.* not made, *Writs* have issued by Warrant of the *Speaker*, by Vertue of Special Order, upon Motion in the House.

Oftentimes on the first Day of *Scobel* 18. the Meeting of the House, as soon as the *Speaker* hath been approv'd, and sometime before, such Persons as have been doubly return'd, have made their Choice.

43 *Eliz.* Mr. *Johnson* said, *The Towns.* 191
Speaker may, *ex Officio*, send a ^{192.}
Warrant to the Clerk of the Crown,
who is to certifie the Lord Keeper,
and so make a new Warrant.

The *Speaker* said, *That I may Ibid.*
inform you of the Order of the ^{Sir Simon d'Ewes}
House, the Warrant must go from *Jour.* 627.
the Speaker to the Clerk of the ^{Col. 2.}
Crown, who is to inform the Lord
Keeper, and then to make a new
Writ.

This

Ibid.

Vide Sir

S. d'Ewes

Journ. 627.

Col. 2.

This Proposition I hold, That our *Speaker* is to be commanded by none, neither to attend any, but the *Queen*, per Sir *Edward Hobby*.

Socbel 20.

Vid. Townsh.

Coll. 216,

217.

Vide Sir

S. d'Ewes

Journ. passim

Socbel 65.

Petyt's

Miscell.

Parl. 140.

The Warrant is to be directed to the *Clerk* of the *Crown* in *Chancery*, by Order of *Parliament* 13 Novemb. 1601.

May 1604. Resolved, That no *Speaker* from henceforth shall deliver a *Bill*, of which the *House* is possessed, to any whosoever, without leave and allowance of the *House*, but a *Copy* only. It is no Possession of a *Bill*, except the same be delivered to the *Clerk* to be read, or that the *Speaker* read the Title of it in the *Chair*.

Rush. Coll.

660.

5 Car. 11. 1628. The *Speaker* being moved to put the *Question* then proposed by the *House*, he refused to do it, and said, That he was otherwise *Commanded* from the *King*. 2 Martij, The *Speaker* was urged to put the *Question*; who said, I have a *Command* from the

the King to adjourn till the Tenth of March, and to put no Question; and endeavouring to go out of the Chair, was notwithstanding held by some Members (the House foreseeing a Dissolution) till a Protestation was publish'd.

When the Queen made an Answer to the Speaker's Speech, he, with the whole House fell upon their Knees, and so continued, till she bid them stand up.

Town's Coll. 263.

Vide Sir S. d'Ewes Journ. 659. Col. 1, 2.

35 Eliz. Mr. Speaker was sent for to the Court, where the Queen's Majesty her self gave him Commandment what to deliver to the House.

Town's Coll. 61.

The Speaker commanded upon his Allegiance not to read any Bills touching Matters of State or Reformation in Causes Ecclesiastical.

Id. 63.

16 Car. I. 1640. Apr. 16. The Speaker received Command from the King, That his Majesties Speech shou'd be Entred in the Journal of the Commons House of Parliament:

Rush. Coll. 1127.

L where

Ibid.

Vide Sir

S. d'Ewes

Journ. 627.

Col. 2.

This Proposition I hold, That our *Speaker* is to be commanded by none, neither to attend any, but the *Queen*, per Sir *Edward Hobby*.

Scobel 20.

Vid. Towns.

Coll. 216,

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S. d'Ewes

Journ. passim

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The Warrant is to be directed to the *Clerk* of the *Crown* in *Chancery*, by Order of *Parliament* 13 Novemb. 1601.

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Rush. Coll.

660.

5 Car. II. 1628. The *Speaker* being moved to put the *Question* then proposed by the *House*, he refused to do it, and said, That he was otherwise Commanded from the *King*. 2 Martij, The *Speaker* was urged to put the *Question*; who said, I have a Command from the

Business of the Speaker.

145

the King to adjourn till the Tenth of March, and to put no Question; and endeavouring to go out of the Chair, was notwithstanding held by some Members (the House foreseeing a Dissolution) till a Protestation was publish'd.

When the *Queen* made an Answer to the *Speaker's Speech*, he, with the whole House fell upon their Knees, and so continued, till she bid them stand up.

Townsh. Coll.
263.

Vide Sir
S. d'Erves
Journ. 659.
Col. 1, 2.

35 *Eliz.* Mr. *Speaker* was sent for to the Court, where the *Queen's Majesty* her self gave him Commandment what to deliver to the House.

Townsh. Coll.
61.

The *Speaker* commanded upon his Allegiance not to read any Bills touching Matters of State or Reformation in Causes Ecclesiastical.

H. 63.

16 *Car. I.* 1640. Apr. 16. The *Speaker* received Command from the *King*, That his *Majesties Speech* shou'd be Entred in the *Journal* of the *Commons House of Parliament*:

Rush. Coll.
1127.

L

where

whereupon the House passed a declarative Vote, *That they did not expect that this should be performed by other Speakers, but upon the like special Command, or by the Order of the House.*

Id. 1137.

Eodem, Resolved, That it was a Breach of Priviledge of the House for the Speaker not to obey the Commands of the House; and that it appeared the Speaker did Adjourn the House by the Command of the King, without the Consent of the House, which is also a Breach of the Priviledge; it was therefore ordered that this should be presented to his Majesty.

Scobel 65.
Petyt's
Miscel.
Part. 140.

1 Jac. I. 1603. Ordered, That it should be precisely registred as the Judgment of the House, that no Speaker from henceforth should deliver a Bill, whereof the House stands possessed, to any whomsoever, without allowance and leave: but that he had Power, and might either shew it, or deliver a Copy (if it seems meet to him.)

;But

Business of the Speaker. 147

But yet it was admitted, that a ^{Id. 142.}
Copy may be delivered, or it may
be shewed to his Majesty.

If upon Division of the House ^{Hakewel}
it appear that the Members are ^{145.}
equal; the *Speaker* hath always
the Casting Voice upon all Que-
stions.

44 *Eliz.* Upon the Question, ^{Townsh. 321,}
Whether Mr. Speaker had a Voice. ^{322.}
It was said by Sir *Walter Raleigh* ^{Vide Sir}
(and confirmed by the *Speaker* ^{S. & Ewes}
himself) *That the Speaker is fore-*
closed of his Voice, by taking of that
Place, which it had pleased them to
impose upon him, and that he was to
be indifferent to both Parties. He
was seconded by Mr. Secretary
Cecil. ^{Four. 683.}
^{Col. 2.}

The *Speaker* hath no Voice in ^{Arg. Parl.}
the House, nor will they suffer him ^{18.}
to speak in any Bill, to move, or ^{Smyth's}
disswade it. ^{Common-}
^{wealth 86.}

CHAP. XIV.

*Order to be observed in
the House.*

Townsh. 54.

TH E *Litany* is read the first Thing, after the *Speaker* is set in the *Chair*. So agreed upon the Motion of Mr. *Speaker* 13 *Eliz.* 1571.

Scobell 6.

When the *Speaker* is set in his *Chair*, every Member is to sit in his Place, with his Head covered.

Ibid.

No Member in coming into the House, or in removing from his Place, is to pass between the *Speaker*, and any Member then speaking; nor may cross, or go overthwart the House, or pass from one side to the other, while the House is sitting.

23 *Eliz.*

23 Eliz. 1580. Upon a Motion made by Sir James Croft Controller of her Majesties Household, and allowed of by the whole House, *That Mr. Speaker and the Residue of the House of the better sort of Calling, do alway at the rising of the House depart, and come forth in comly and civil sort, for the Reverence of the House, in turning about with a low Courtesie, as they make at their coming into the House, and not unseemly to thrust, and throng out.*

Sir Simon
d'Ewes
Jour. 282.
Col. 2.

No Member is to come into the House with his Head covered, nor to remove from one Place to another with his Hat on, nor is to put on his Hat in coming in, or removing, until he be set down in his Place.

Scobel 6.

39 Eliz. None to enter the House with his Spurs on; nor until he pay the Serjeant's Fees.

Townsh. 101,
181.
Vid Sir S.
d'Ewes

While the House is sitting, no man ought to speak or whisper to another, to the end the

Jour. 550,
Col. 1. 623.
Col. 1.

Scobel 6. House may not be interrupted,
Vid. Sir S. when any are speaking ; but eve-
d'Ewes ry one is to attend unto what is
Journ. 487. spoken ; in which Case Penalties
Col. 1. have been imposed.

Ibid. When any Member intends to
 speak, he is to stand up in his
 Place uncover'd, and address him-
 self to the *Speaker* ; who usually
 calls such Person by his Name, that
 the House may take notice who it
 is that speaks.

Townsh. Coll. Mr. *Downold* going about to
 224. speak about a Bill, the *Speaker*
 interrupted him, and arose, with-
 out further hearing him, which
 he took in great Disgrace, and told
 him, *He would complain of him the*
next Sitting.

Townsh. Coll. If any man in this House speak
 252. wisely, we do him great wrong to
 interrupt him : if foolishly, let us
 hear him out, we shall have the
 more Cause to tax him, *per* Secre-
 tary *Cecil.*

Scobel 7. If more than one stand up at
Vid. Sir S. once, the *Speaker* is to determine
d'Ewes who
Journ. 434.
Col. 1, 2.

who was first up ; and he is to speak, and the other sit down, unless he, who was first up, sit down again, and give way to the other ; or that some other Member stand up, and acquaint the House, that another was up before him, whom the *Speaker* calls, and the House adjudge it so.

While one is speaking, none else ^{Ibid.} is to stand up, or interrupt him, ^{Vid. Towns. Coll. 205.} until he have done speaking, and be set down, and then the other may rise up and speak, observing the Rules.

21 Junij 1604. It was agreed ^{Ibid.} for an Order, *That when Mr. Speaker desires to speak, he ought to be heard without interruption, if the House be silent, and not in Dispute.*

When the *Speaker* stands up, ^{Ibid.} the Member standing up, ought to sit down.

27 April 1604. Agreed for a ^{Scobel 8.} Rule, *That if any Question be upon a Bill, the Speaker is to explain ; but not to sway the*

House with Arguments or Dispute.

Scobel 8. 4 Junij 1604. Agreed for an
Vide Sir Order, That whosoever hisseth, or
S. d'Ewes disturbeth any man in his Speech,
Jour. 335. by coughing, spitting, &c. shall an-
Col. 1.640. swer it at the Bar.
Col. 2.

Ibid. 7 Maij 1607. Ordered upon
the Question, That in going forth,
no man shall stir, until Mr. Speaker
do arise and go before, and then
all the rest to follow after him.

Co. 12. 116. He, who first stands up to speak,
Smith's he shall first speak, without any
Common- Difference of Persons.
wealth 84.

If in Debate words be let fall,
that give Offence, Exceptions
shou'd be taken the same day, and
before such Member go out of the
House: or he, who is offended,
may move, that such Person may
not go out of the House till he
hath given Satisfaction in what
was by him spoken. And in
Scobel 81. such Case, after the present
Debate is over, the words must
be repeated by the Person excep-
ting:

ting : and in case he desire, or the House command him, he is to explain himself, standing in his Place; which if he refuse to do, or the House be not satisfy'd with such Explanation, then he is to withdraw.

43 Eliz. 1601. It was said by Townsh. Coll.
Secretary Cecil, *If any that sit* 199.
next the Door, be desirous to sit Vide Sir
next the Chair, to give his Opini- Simon
on; I will not only give him my d'Ewes
Place, but thank him to take my Four. 630.
Charge: We that sit here, take your Col. 2.
Favours out of Courtesie, not out of
Duty.

Tho' Freedom of Speech and Scobel 72.
Debates be an undoubted Privi-
ledge of the House, yet whatsoe-
ver is spoken in the House, is sub-
ject to the Censure of the House.

Febr. 19. 1592. 35 Eliz. After Townsh. Coll.
the Names of the *Knights, Citizens* 51.
and *Burgeses* were read and de-
clared to the *Clerk of the Crown*,
and entred in his *Book*, they en-
tred into the House.

The

Ibid.

Vide Sir

S. d'Ewes

Jour. passim

The House being set, the Earl of Derby, *High Steward* for this Parliament, came into the House to take their Oaths. All being removed into the *Court of Requests*, the *Lord High Steward* sitting at the Door, call'd the *Knights* and *Burgesses* of every County, according to the Letters of their Names in the Alphabet. Alphabetically every one answered, as he was call'd, and having answer'd, departed thence to the *Parliament House Door*, and there took the *Oath of Supremacy*, given him by one of the *Queens Privy Counsellors*.

Townsh. Coll.

51.

The Fee for entering his Name into the *Serjeant's Book* is Two shillings, the Rewards to the Door-Keepers, Three shillings and eight pence, the Fee for returning the Indenture, Two shillings.

Id. 15.

Febr. 7. 1588. 31 Eliz. This Day the House was call'd over, and all those that did then sit in the House, and were present at the calling

ling of the same, did thereupon severally answer to their Names, and departed out of the House, as they were called.

31 Eliz. 1588. By Consent of ^{Sir Simon d'Ewes} the House (upon the motion of Sir ^{Jour. 432.} Edward Hobby) admonition was ^{Col. 2.} given by Mr. Speaker, *That Speeches used in this House by the Members of the same, be not any of them made or used as Table talk, or in any wise delivered in Notes of writing to any person or persons whatsoever, not being Members of this House, for that they are the Common-Council of the Realm.*

CHAP. XV.

Orders of the House.

Scobel 32. 2 *Maij* 1610. **A** Member speaking, and his Speech, seeming impertinent, and there being much hissing and spitting, it was conceived for a Rule, *That Mr. Speaker may stay impertinent Speeches.*

Ibid.

18 *Maij* 1604. It was Resolved, *That eight ingrossed Bills should be read the next day, half an hour after eight.* The next day about that Time, a Member entring into a long Discourse, *De merâ Fide, & solâ Fide, &c.* was interrupted; and the Question offered, *Whether he shou'd go on, in respect of the Order.* But it was agreed for a Rule, *That if any man speak*
not

Orders of the House.

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not to the Matter in Question, the Speaker is to moderate.

April 1604. He that digresseth from the Matter, to fall upon the Person, ought to be suppressed by the *Speaker*. *Item 31. Vld. Towns. Coll. 276.*

17 April 1604. If any superfluous Motion or tedious Speech be offer'd in the House, the Party is to be directed, and order'd by the *Speaker*. *Ibid.*

No reviling or nipping words must be used, for then all the House will cry, *It is against the* *Smith's Commonwealth, 85.*

Order. And if any speak unreverently or seditiously against the Prince, or the Privy Council, I have seen them not only interrupted, but it hath been moved after to the House, and they have sent them to the *Tower*.

If any man speak impertinently, or beside the Question in hand, it stands with the Orders of the House, for Mr. *Speaker* to interrupt him, and to know the Pleasure of the House, *Whether they will further hear him.* *Scobel 33.*

24 Jan.

Id. 31.
Vid. Sir S.
d'Ervis
Jour. 1284.

24 Jan. 23 Eliz. Mr. Carleton endeavouring to speak contrary to the Sense of the House, was interrupted: and offering to speak again, urging it was for the Liberty of the House; the *Speaker* and the House did stay him.

Id. 21.

When a Motion has been made, the same may not be put to the Question, until it be debated, or at least have been seconded by one or more Persons standing up in their Places: and then the same may be put to the Question, if the Question be call'd for by the House, or their general Sense be known; which the *Speaker* is to demand, unless any Member stand up to speak.

Ibid.

When a Motion has been made that Matter must receive a Determination by the Question, or be laid aside by the general Sense of the House, before another be entertain'd.

Ibid.

28 June 1604. A Motion being made, another interposed a Speech

Speech tending to another Business : but it was answer'd, *That there was no Precedent for that Speech to be used, before the other Motion, which was made before, had received an Answer, and an End.* And the House did accordingly determine the first Motion in the first Place.

4 Dec. 1640. Ordered, *That Scobell 22*
till the Business in Agitation be ended, no new Motion of any new Matter shall be made without leave of the House.

If the Matter moved do receive *ibid.*
a Debate *pro & contra*, in that Debate none may speak more than once to the Matter : and after some Time spent in that Debate, the *Speaker* collecting the Sense of the House upon the Debate, is to reduce the same into a Question, which he is to propound, to the end the House in their Debate afterward may be kept to the Matter of the Question, if the same be approved by the House to
con-

contain the Substance of the former Debate.

Ibid.

After such Question is propounded, any Member may offer his Reasons against that Question in whole, or in part; which may be laid aside by a general Consent of the House, without a Question put.

Scobell 23.

But without such general Consent, no part of the Question propounded may be laid aside, or omitted: and tho' the general Debates run against it, yet if any Member before the Question put (without that part) stand up, and desire that such Words or Clause may stand in the Question, before the main Question is put: a Question is to be put, *Whether those Words, or Clause shall stand in the Question*.

Ibid.

The like Method is observed when any other Alteration is debated upon, to be made in a Question propounded: but upon putting a Question for such Addition, Alre-

Alteration, or Omission, any Person, who hath formerly spoken to the Matter of the Question, may speak again, to shew his Reasons for, or against such Alteration, Addition, or Omission, before such Question be put.

When the *Speaker* (the House ^{Ibid.} calling for a Question) is putting the same, any Member that hath not spoken before to the Matter, may stand up before the Negative be put.

13 Junij 1604. A Bill touching ^{Ibid.} a Subsidie of *Tunnage* and *Poundage* having been formerly upon a third Reading recommitted, was return'd : and a *Proviso* being tendered for *Chester*, which was twice read, the Question was put for Commitment, in the Affirmative : but before the Negative was put, one stood up, and spoke to it, which was admitted for orderly, because it is no full Question without the Negative part be put, as well as the Affirmative.

M Every

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Ibid.

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M

Every

Id. 24.

Every Question is to be put first in the Affirmative, and then the Negative: to which question every Member ought to give his Vote one way or other: and the *Speaker* is to declare his Opinion, whether the *Yea's* or the *No's* have it; which is to stand as the Judgment of the House. But if any Member, before any new Motion made, shall stand up and declare, that he doth believe that the *Yea's*, or the *No's* (as the Case shall be) have it, contrary to the *Speaker's* Opinion, then the *Speaker* is to give Direction for the House to divide, declaring whether the *Yea's* or the *No's* are to go forth.

Id. 25.

Upon the dividing of the House, those are to go forth, who are for varying from, or against the constant Orders of the House (as, that a Question shall not be put, or not be now put; it being the Course of the House, that after a Debate the same shou'd be determin'd by a Question, or the like)

or

or against any positive Order made by the House; or for the passing any new thing, as reading a Petition, or Bill, and committing, ingrossing, or passing such Bills, or the like.

Those that are for the new Bill ^{Id. 52.}
(if there be a Question of Voices)
shall go out of the House; and
those who are against the Bill, and ^{Co 12. 116.}
for the Common Law, or any for- ^{Sir Simon}
mer Law, shall sit still in the ^{d'Ewes}
House, for they are in Possession of ^{Jour. 505.}
the old Law. That in 1604. those ^{Col. 1}
for the Bill sate, and those against ^{Vid: contra}
it went out. So 7 Aug. 1641. ^{Scobel 43.}

10 Dec. 1640. It was declared ^{Memorials}
for a constant Rule, ^{in Hakewil}
That those that ^{25.}
give their Votes for Preservation ^{Vide Sir}
of the Orders of the House, shall stay ^{S. d'Ewes}
in; and those who give their Votes ^{Journ. 509.}
otherwise, to the introducing any
new Matter, or for any Alteration,
shall go forth.

24 Mart. 21 Jac. 25. The House ^{Memorials;}
being divided upon a Question a- ^{ut supra:}
bout Election of Members; it was

over-ruled by the House, that the
Noe's shou'd go forth.

Ibid.

This is also the Course upon any
Question to agree with a Report
in Favour of the Opinion of a
Committee.

Id. 26.

Upon dividing the House, the
Speaker is to nominate two of
those that are in the Affirmative,
and two of the Negatives, to count
the House; which four (each of
them having a Staff in his Hand)
are to count the number of the
Persons who remain sitting in the
House: and then to stand within
the Door, two on the one side, and
two on the other, and to count
the Number of them who went
forth, as they come in.

Ibid.

While the House is thus divi-
ded, or dividing, no Member may
speak, nor (unless it be to go forth
upon the Division) remove out of
his Place.

Id. 27.

When the House is thus told,
those two of the Tellers, who are
of the number of those who have
the

the major Votes, standing on the right hand, and the two other on the left hand at the Bar (the rest being all set in their Places) are to come from thence up to the Table together (making the usual Obeysance to the House three times; once at the Bar, again in the middle of the House, and again when they are come to the Table) and that Person who stands on the right hand, is to declare to the *Speaker* the number of the *Yea's* (who sat, or went out, as the Case is) and of the *No's*: and then with like Reverence to depart into their Places; after which, *Mr. Speaker* is to report the same to the House.

If the Affirmative have the major Vote by the Judgment of the *Speaker*, or (in case of Division) upon the Division; the *Clerk* is to enter the Vote, *Resolved*. If the Negatives, then he is to enter it thus—*The Question being put* (setting down the words of the Question) it pass't in the Negative.

Ibid.

Upon the Division, if the Members appear to be equal, then the *Speaker* is to declare his Vote, whether he be a *Tea*, or a *No*, which in this Case is the casting Voice: but in other Cases the *Speaker* gives no Vote.

Ibid.

I *Maij* 1606. Upon a Question, whether a man saying *Tea*, may afterward sit and change his Opinion, a Precedent was remembred by the *Speaker*, of Mr. *Morris*, Attorney of the Wards, in 39 *Eliz.* that in like case changed his Opinion.

Id. 28.

If upon a Debate it be much controverted, and much be said against the Question; any Member may move, that the Question may be first made, whether that Question shall be put, or whether it shall be now put; which usually is admitted at the Instance of any Member, especially if it be seconded, and insisted on: and if that Question being put, it pass in the Affirmative; then the main Question is to be put immediately,
and

and no man may speak any thing further to it, either to add, or alter. But before the Question (whether the Question shall be put) any Person, who hath not formerly spoken to the main Question, hath liberty to speak for it, or against it; because else he shall be precluded from speaking at all to it.

If in a Debate there arise more *Ibid.* Questions than one, and it be controverted, which Question shou'd be first put; the Question first moved and seconded is regularly to be first put, unless it be laid aside by general Consent. If the first Question be insisted on to be put, and the major Part seem to be against it, the Question is to be, whether that Question shall be now put: if that pass in the Negative, then the other Question may be put, if desired: nevertheless any Person may speak to it again, before it be put. If in the Affirmative, then it is to be put without any Addition or Alteration, as be-

fore; and after the Question is put, if any Member move to have the other Question put, every one hath leave to speak to it again, as if it were a new Question.

Id. 29.

If a Matter be received into Debate, and a Question grow, whether the House shall proceed in that Debate at this time, and it fall out, that the House be divided; in such Case the *No's* are to go forth (it being contrary to the course of the House, that any Business shou'd be laid aside till it be determined by a Question) If the Question be for an Adjournment of a Debate, the *Yea's* are to go forth upon the same Reason.

Ibid.

After a Question is propounded, no man may speak more than once to the Matter; but having spoken to the Matter, when the Question comes to be put, he may speak to the manner or words of the Question, keeping himself to that only, and not ravelling into the merits of it.

If

If a Question upon a Debate ^{Ibid.} contain more Parts than one, and Members seem to be for one Part, and not for the other ; it may be moved, that the same may be divided into two, or more Questions : as Dec. 2. 1640. the Debate about the Election of two *Knights* was divided into two Questions.

No Member in his Discourse in ^{Id. 30.} the House may mention the Name ^{Vide Smyth's} of any other Member then pre-^{Common-}sent, but to describe him by his ^{wealth 85.} Title or Addition (as *that Noble Lord, that worthy Knight* ; or by his Office, as *Judge, Serjeant, Gentleman of the long or short Robe* ; or by his Place, as *the Gentleman near the Chair, near the Bar, on the other side* ; or *that Gentleman that spake last, or last save one, or the like.*)

During any Debate any Member, tho' he have spoken to the ^{Memorials,} Matter, may rise up, and speak to ^{ut supr. 30.} the Orders of the House, if they be transgressed, in Case the *Speaker* do

do not : but if the *Speaker* stand up, he is first to be heard, and when he stands up, the other must sit down, till the *Speaker* sit down.

Ibid. & 31. But if any Person rise up to speak to the Orders of the House in the midst of a Debate, he must keep within that Line, and not fall into the Matter it self : if he do, he may be taken down by the *Speaker*, or any other Member, calling to the Orders of the House.

Id. 31.
Vid. Towns.
Coll. 205.

While a Member is speaking to a Debate or Question, he is to be heard out, and not taken down, unless by Mr. *Speaker* (as in some Cases he may) or that he speak of such Matter as the House doth not think fit to admit.

Memorials
in Hakewil.
33.

A Matter upon Debate having been once finally determined by a Question, ought not to be again brought into Dispute.

Ibid.

27 *Martij* 1604. Sir *Edward Coke* Attorney General, and Dr. *Hone* bring a Message from the *Lords*, desiring a Conference about the

Orders of the House.

171

the Case of Sir Francis Goodwyn. *Vide this Argument at large in the Appendix.*
Upon this Message it was argued, *That now the Judgment having pass'd the House, it could not, nor ought to be reversed by them: and upon the Question it was resolv'd, There shou'd be no Conference.*

2 Apr. 1604. A Vote having *Ibid.*
passed some days past, *That no Conference shou'd be admitted with the Lords,* the same Question was again moved, but was carried in the Negative. And it was then urged for a Rule, *That a Question having been once made, and carried in the Affirmative, or Negative, cannot be questioned again, but must stand as the Judgment of the House.*

4 Junij 1604. Agreed for a *Id. 45.*
Rule, *If two stand up to speak to a Bill, he that would speak against the Bill (if it be known by Demand or otherwise) is to be first heard.*

11 Nov 1640. It is declared, *Id. 69.*
as a constant Order of the House,
That if a Witneß be brought to the House,

House, the House sitting, the Bar is to be down; otherwise, if the House be in a Committee.

Id. 70.

In a Debate about an Election, it was Resolved, That the Party concern'd shall be heard to inform the House, and then he is to go forth.

Id. 71.

When any Complaint is made against a Member, or Exceptions taken to any thing spoken by him (after he hath been heard to explain himself, if he desire, or the House command it, which is usually done by him standing in his Place) if the House be not satisfied, but fall into Debate thereof, such Member is to withdraw.

Townsh. Coll.
311.

The Members of the *lower House* came to the *Lords*, upon a Conference, as they were sitting at the Table, and going to the upper end thereof, spake.

Townsh. 95.
Vide Sir
S. d'Ewes
Journ. 585.

When any Bills or Messages are brought from the *lower House* to be presented to the *upper House*, the *Lord Keeper*, and the rest of the *Lords* are to rise from their Places,
and

and to go down to the Bar, there to meet such as come from the *lower House*, and from them to receive in that Place their Messages or Bills.

But when any Answer is to be ^{ibid.} deliver'd by the *Lord Keeper* in the name and behalf of the House, to such *Knights* and *Burgesses* as come from the *lower House*, the said *Knights* and *Burgesses* are to receive the same, standing toward the lower end of the House; and the *Lord Keeper* is to deliver the same with his Head covered, and all the *Lords* are to keep their Places.

In the Answer of the *Commons* ^{Memorials,} *House of Parliament* to K. James ^{ut supra} his Objection in Sir Francis Goodwyn's Case (3 Apr. 1604.) the Objection being, *That they refuse Conference with the Lords.* The Answer is in these words, *Concerning our refusing Conference with the Lords; there was none desired, till after our Sentence passed: and then we thought, that in a matter pri-*
vate

vate to our own House (which by Rules of Order might not be by us revoked) we might without any Imputation refuse to concur.

C H A P. XVI.

Passing of Bills.

Townsh. Coll.
209.

43 Eliz. 1601. **W**Hile there were divers Disputes about a Bill, Mr. Fleming the Queens Solicitor took the Bill to look a word in it; after he had done, and laid it on the Board, one stood up and said, Mr. Speaker, after a Bill is ingrossed, you ought to hold it in your hand, and let no man look into it; which was confessed by all. And so the Speaker took it.

Cook 12.
115.

When a Bill is read, the Speaker doth open the Parts of the Bill; so that each Member of the House may

may understand the Intention of each Part of the Bill.

Such Bills, as being first passed *Hakewil* in one House, are sent unto the o-¹³⁴ther, are alway sent in *Parchment* fairly ingrossed.

Publick Bills are in due course *Ibid.* to be preferred in reading and pas-^{Co. 12. 116.}sing before private: and of Publick, such as concern the Service of God and Good of the Church. Secondly, such as concern the *Commonwealth*, in which are included such as touch the Person, Revenue, or Household of the *King, Queen, &c.* and they ought especially to be preferred in passing. Lastly, private Bills are to be offered to be read, and passed in such Order as they were preferred. And *Townsh. Coll.* they that carry them, to give some^{270.} brief Commendation of them.

Any Member of the House may *Scobell 40.* offer a Bill for publick Good, except it be for imposing a Tax: which is not to be done, but by Order of the House first had.

Ibid.

If any Member desire, that an Act made, and in force, may be repealed or altered, he is first to move the House in it, and have their Resolution, before any Bill to that purpose may be offer'd; and if upon the Reasons shew'd, for repealing or altering such Law, the House shall think it fit, they do usually appoint one or more of the Members to bring in a Bill for that purpose.

Townsh. Coll.
238.

All men of Law know, that a Bill, which is only expository to expound the Common Law, doth enact nothing, neither is any *Proviso* good therein.

Hakewel
136.

But the *Speaker* is not precisely bound to any of these Rules, for the preferring of Bills to be read or passed; but is left to his own good Discretion (except he be specially directed by the House to the contrary) and tho' he be earnestly pressed by the House for the reading of some one Bill; yet if he have not had convenient time

time to read the same over, and to make a *Breviat* thereof for his own memory; the *Speaker* doth claim a Priviledge to defer the Reading thereof to some other time.

The *Clerk* being usually directed ^{Hakewil} by the *Speaker* (but sometime ^{137.} by the House) what Bill to read, with a loud and distinct Voice first reads the Title of the Bill, and then, after a little Pawse, the Bill it self; which done, kissing his Hand, he delivereth the same to the *Speaker*; who standeth up uncover'd (whereas otherwise he sitteth with his Hat on) and holding the Bill in his Hand, saith, *This Bill is thus intituled*, and then readeth the Title; which done, he openeth to the House the Substance of the Bill, which he doth, either trusting to his memory, or using the help, or altogether the reading of his *Breviat*, which is filed to the Bill.

Sometimes reading the Bill it self, ^{Hakewil} ^{137.} Vide ^{Scobell} 42.

Ibid.

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Sometimes reading the Bill it
N self,^{Hakewil 137. Vide Scobel 42.}

self, especially upon the Passage of a Bill, when it hath been much alter'd by the *Committees*, so that thereby it differeth very much from the *Breviat*.

Id. 138. When he hath open'd the Effect of the Bill, he declareth to the House, *That it is the first Reading of the Bill*, and delivereth the same again to the *Clerk*.

Id. 138. The Bill containing the *King's* General Pardon hath but one Reading in the *Lord's House*, and one below: the Reason is, because the Subject must take it as the *King* will give it, without any Alteration; and yet many times Exceptions are taken at the Reading thereof, for that it is not so favourable as in former times.

Hakew. lb. The like of a Bill of Subsidies granted by the *Clergy*.

Id. 139. The usual Course is to spend the Morning, before the House grow full, in the first Readings, and to defer the second or third Reading till the House grow full.

No

Passing of Bills.

179

No Knight, Citizen, or Burgeſſ^{Co. 12. 116.}
ought to ſpeak above once to one
Bill in one day, unleſs ſometime by
way of Explication:

At the firſt Reading of the Bill, ^{Hakerwel}
it is not the Courſe for any man ^{139.}
to ſpeak to it, but rather to con-
ſider of it, and to take time till
the ſecond Reading: unleſs it car-
ry matter of apparent hurt to the
Commonwealth, and ſo to be re-
jected.

Nor for any Addition, for ^{Ibid.}
thereby it is imply'd that the Bo-
dy of the Bill is good, which till
the ſecond Reading, doth not re-
gularly come to the Trial.

If any Bill originally begun in ^{Id. 140.}
the *Commons Houſe*, upon the firſt ^{Scobel 42.}
Reading happen to be debated to
and fro, and that upon the De-
bate, the Houſe do call for the
Question; it ought to be, not
Whether the Bill ſhall be read the
ſecond time (for ſo it ought to be
in ordinary Courſe) but *whether*
it ſhall be rejected.

Hak. Ibid.

If a Bill coming from the *Lords* be spoken against, and pressed to be put to the Question, upon the first Reading; the *Speaker*, in favour and respect thereto, shou'd not make the Question for Rejection (as in the former Case) but shou'd first make the Question for the second Reading; and if that be deny'd, then for Rejection. But usually when any such Debate is, the *Speaker* doth forbear to make any Question at all thereupon, except he be much pressed thereto, it being better to consider of it before it be put to such a hazard.

Id. 141.

Scobel 42.

If the Question for Rejection be made, and the greater Voice be to have it rejected, the *Clerk* ought to note it rejected in his *Journal*, and so to indorse it on the back of the Bill; and it shall be no more read: If the Voice be to have the Bill retained, it shall have his second Reading in Course.

Ibid.

It is against the ordinary Course that the same Bill shou'd be read
more

more than once in one day, but for special Reasons it hath been suffer'd, that private Bills have been in one day read twice.

It is likewise done sometimes, *Hakewill*
when the House lacketh other Bu-^{142.}
sinesses wherein to imploy them-
selves, especially if the Bill be of
no great Importance, howsoever it
is never but upon Motion and spe-
cial Order.

When special *Committees* ap-^{Ibid.}
pointed for the drawing of some
one special Bill, present the same
ready drawn to the House, it hath
been often seen, that the same Bill
hath not only been twice read, but
order'd also to be engrossed the
same day.

It is not without Precedent that ^{Ibid.}
a Bill hath been thrice read, and
passed in the same day. But this is
a President that standeth alone.

A Bill was read the fourth time, *Sir Simon*
before it pass't the House, and tho' ^{d'Ewes}
there want not other Presidents, ^{Jour. 90.}
yet it is rare and worth the Obser-
vation. ^{Col. 1.}

Id. 335.
Col. 1.

A Bill was put to the Question, upon the first Reading, and rejected: but it is not usual for a Bill to be put to the question upon the first Reading.

Id. 337.

Col. 2.

415. Col. 2.

27 Eliz. 1584. A Bill was committed upon the third Reading, having been formerly committed upon the second; which is not usual.

Hakewel

143.

A Bill may be preferr'd to be secondly read the next day after the first Reading: but the usual Course is to forbear for two or three days, that men may have more time to consider upon it, except the Nature of the Business be such, that it requireth haste.

Ibid.

After the Bill is secondly read, the *Clerk*, as before, in humble manner delivereth the same to the *Speaker*; who again readeth the Title and his *Breviat*, as he did upon the first Reading: which done, he declareth, *That it was a second Reading of the Bill.* And then he ought to pause a while,
ex-

expecting whether any of the House will speak to it ; for before the *Speaker* hath so declared the state of the Bill, no man should offer to speak to it ; and then, and not before , is the time when to speak.

If after a pretty distance of ^{Ibid.} time, no man speak against the Bill for matter or form , he may make the Question for ingrossing thereof, if it be a Bill originally exhibited into the *Commons House*.

So likewise if divers speak for ^{Id. 144.} the Bill, without taking Exception to the Form thereof , he may make the same Question for the ingrossing.

The like Question for the in- ^{Ibid.} grossing ought to be made, if the greater Voice be, *That the Bill shall not be committed* : for it were to no end further to delay the proceeding of the Bill, if there be no exception taken to the matter or form thereof : but upon the second Reading , and after the *Speaker*

hath deliver'd the state thereof, the House doth usually call for committing of the Bill; and then if any man will speak against it, either for Matter or Form, he ought to be heard.

Id. 144.

After the first man hath spoken, the *Speaker* ought to rest a while, expecting whether any other man will speak thereto: so ought he likewise to do after every *Speech* ended: when he perceiveth that the Debate is at an end, he ought then to make the Question for the committing thereof, in this sort:

Id. 145.

As many as are of Opinion that this Bill shall be committed, say Yea.

And after the Affirmative Voice given,

As many as are of the contrary Opinion, say No.

And he ought by his Ear to judge

judge which of the Voices is the greatest : if that be doubtful, the House ought to be divided.

If upon Division of the House ^{Ibid.} it appear that the Numbers are equal, the *Speaker* hath the casting Voice upon all Questions.

If it appear that the Affirma- ^{Ibid.} tive Voice be the greater, then ought he to put the House in mind touching the naming of *Committees*, which is done thus.

Every one of the House that list may call upon the Name of any one of the House to be a *Committee*, and the *Clerk* ought in his *Journal* to write under the Title of the Bill the Name of every one so called on, at least of such whose Names (in that Confusion) he can distinctly hear ; and this he ought to do without Partiality, either to those that name, or to the Party named.

He that speaketh directly a- ^{Id. 146.} gainst the Body of the Bill, may ^{Townsh. Coll. 208.} not be named a *Committee*: for he
that

that would totally destroy, will not amend it.

Hak. Ibid. When a convenient Number of *Committees* are named, then ought the *Speaker* to put the House in mind to name Time and Place, when and where the *Committees* may meet; which the *Clerk* ought likewise to enter into his *Journal-Book*: and when the House is in silence, he ought with a loud voice to read, (out of his *Book*) the *Committees* Names, and the Time and Place of the *Commitment*, that the *Committees* may take Notice thereof.

Ibid. After a Bill, which is sent from the *Lords*, is twice read, the Question ought to be for the *Commitment*: if it be deny'd to be committed, it ought to be read the third time, and the next Question ought to be for the Passage, and not for the Ingrossing (as it is where the bill originally begins in the *lower House*) for Bills, which come from the *Lords* come always engrossed. The

The Question for the Passage *Hakewil*
shou'd in ordinary Course be then ^{147.}
made, when the Bill is deny'd to
be committed; but not till the
Bill be read the third time.

In the debating of Bills in the *Co* 12. 116.
House, no man may speak twice
in one day (unless sometime by
way of Explication) except the
Bill be oftner read than once; and
then a man may speak as often as *Hak.* 148.
the Bill is read. Otherwise it is
at *Committees*, or when in the
House the Debate ariseth upon
some Motion concerning the Or-
der of the House.

After the Debate is ended, the *Id.* 150.
Speaker ought to put the Questi-
on for Ingrossing.

If the greater Number of Voi- *Ibid.*
ces be, that the Bill ought not to
be ingrossed, the *Clerk* ought to
make an Entry in his *Journal*, that
the same was dash'd: and so he
ought likewise to note upon the
back of the Bill, and the day when.
If the Voice be to have it ingros-
sed,

sed, it is the Office of the *Clerk* to do it.

Ibid.

It is always to be observed, That when the Bill is engrossed, the *Clerk* ought to endorse the Title thereof upon the back of the Bill, and not within the Bill in any Case.

Ibid.

So ought likewise such Bills as come from the *Lords* to have Titles endorsed upon the back of the Bill, and not within.

Id. 51.

After a Bill hath been committed, and is reported, it ought not in an ordinary Course to be committed, but either to be dash'd or ingrossed: and yet when the Matter is of Importance, it is sometimes for special Reasons suffer'd; but then usually the Re-commitment is to the same *Committee*.

Id. 52.

About two or three days after the Bill is thus order'd to be engrossed, and is accordingly engrossed, it is offer'd by the *Speaker* to be read the third time, for the Passage thereof.

For

Passing of Bills.

189

For the most part the *Speaker* ^{Id. 153.} putteth not any one Bill to the Passage by it self alone, but stayeth till there be divers Bills ready engrossed for the third Reading; and when he hath a convenient Number (which may be five, or six, rather less than more) then he giveth Notice to the House, *That he purposeth next day to offer up some Bills for the Passage, and desireth the House to give special Attendance for that purpose*; and then the day following he doth accordingly put them to the third Reading. First private Bills, until the House be grown to some fulness; and then he offereth to be read the publick Bills, which are engrossed.

It hath at some times been order'd, *That for the preventing of carrying of Bills with a few Voices, that no Bills shou'd be put to the Passage until Nine of the Clock, at which time the House is commonly full, or shortly after.*

When

Id. 153.

When the Bill is read the third time, the *Clerk* delivereth it to the *Speaker*, who reads the Title thereof, and openeth the Effect of the Bill, and telleth them, *That the Bill hath now been thrice read, and that with their Favours he will put it to the Question for the passing*: but pawseth a while, that Men may have Liberty to speak thereto; for upon the third Reading the Matter is debated afresh, and for the most part it is more spoken unto this time, than upon any of the former Readings.

Id. 154.

When the *Argument* is ended, the *Speaker* (still holding the Bill in his hand) maketh a Question for the Passage, in this sort: *As many as are of Opinion that this Bill shou'd pass, say Yea, &c.*

Ibid.

If the Voice be for the Passage of the Bills, the *Clerk* ought to make a Remembrance thereof in his *Journal*; if otherwise, then his Remembrance must be accordingly made.

Upon

Passing of Bills.

191

Upon the Bill thus passed (if it be originally exhibited in the *House of Commons*) the *Clerk* ought to write within the Bill on the top toward the right hand, *Soit baille aux Seigneurs*. *Brook Abr. f. Edit. 119 n. 4.*

If the Bill passed be originally begun in the *Lords House*, then ought the *Clerk* to write underneath the Subscription of the *Lords* (which always is at the foot of the Bill) *A cest Bill les Commons sont assentus*. *Brook 119. 4.*

19 Dec. 1584. 27 *Eliz.* The *House of Commons* taking Exceptions about endorsing of Bills in the upper part of them, whereas it ought to be done at the neither and lower part; the *Lords* did very respectfully take away their said Grievance, by the alteration of the Indorsments aforesaid, according to the usual and ancient Form. *Sir Simon d'Ewes Jour. 344. Col. 2.*

No Bill upon the third Reading, for the Matter or Body thereof, may be recommitted: but for some

some particular *Clause* or *Proviso*, it hath been sometimes suffered ; but it is to be observed as a thing unusual after the third Reading.

Hakewel
157.

It hath been much doubted , whether when a Bill is in Debate for the Passage, it ought not to receive the Resolution of the House the same day wherein it is first offer'd to the Passage : but Precedents are, where the Case being of some Importance , and the Debate growing long, the *Argument* hath been put over to the next day : in which Case he that hath already spoken to the Bill the first day , may not again speak the second, no more than he may speak twice in one day , where the *Argument* is not deferred to another day.

Id. 158.

If a Bill be rejected , the same Bill may not be offer'd to the House again the same Session : but if it be alter'd in any Point material, both in the body, and in the title, it may be received the second time.

In

In the time of the Reading of a Bill, the House should not be interrupted with any other Business; and yet in 1. *El* the House adjourn'd it self, till the next day after the Bill for Sealing Clothes was half read, only to be present at the Conference about Religion in *Westminster-Abby*.

Sometimes the House conceiving much Offence against some Bills, doth not only order them to be rejected, but to be torn in the House.

When a Bill is thrice read, and *Id.* 139. pass't in the House, there ought to be no further Alteration thereof in any Point.

When the *Speaker* hath in his hands a convenient number of Bills ready pass'd, as five or six, or thereabouts, he then putteth the House in mind of sending them up to the *Lords*, and desireth the House to appoint Messengers, who accordingly do appoint some principal Member of the House

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House in mind of sending them up
to the *Lords*, and desireth the
House to appoint Messengers, who
accordingly do appoint some one
principal Member of the House

O

for

for that purpose, to whom the Bills are delivered in such order, as he ought to present them to the *Lords*; which is done by direction of the *Speaker*, except the House be pleas'd to give special direction therein.

Id. 176.

The Order which hath usually been observed in ranking of them, is; First, to place them that came originally from the *Lords*. Secondly, those that being sent up to the *Lords* from the *Commons House*, were sent back to be amended. Thirdly, publick Bills originally coming from the *Commons House*; and they to be marshall'd according to their Degrees in Consequence. Lastly are to be placed private Bills, in such Order, as the *Speaker* pleaseth.

Ibid.

Many times the House (with a purpose especially to grace some one Bill) sendeth it alone, with a special Re-commendation thereof: the Messenger for this purpose is usually attended by thirty or forty
of

of the House, as they please, and are affected to the Business.

The principal Messenger, who ^{Id. 177.} delivers the Bills to the *Lords*, coming in the first Rank of his Company to the Bar of the *Lords House*, with three *Congies*, telleth the *Lords*, That the *Knights*, *Citizens*, and *Burgesses* of the *Commons House* have sent unto their *Lordships* certain *Bills*; and then reading the Title of every Bill, as it lyeth in order, so delivereth the same in an humble manner to the *Lord Chancellor*, who of purpose cometh to receive them.

Bills sent from the *Lords* to the ^{Ibid.} *Commons House*, if they be ordinary Bills, are sent down by *Serjeants at Law*, or by two *Doctors* of the *Civil Law*, being *Masters* of the *Chancery*, and *Attendants* in the *upper House*, accompanied sometimes with the *Clerk of the Crown*, an *Attendant* there.

Bills of greater moment are u- ^{Id. 178.} usually sent down by some of the

Judges Assistants there, accompanied with some of the *Masters of the Chancery*; who being admitted Entrance, do come up close to the Table where the *Clerk* sits, making three *Congies*; and there acquainting the *Speaker*, That the *Lords* have sent unto the *House* certain *Bills*, doth read the *Titles*, and deliver the *Bills* to the *Speaker*, and so again departeth, with three *Congies*: when they are out of the *House*, the *Speaker* holds the *Bills* in his hands, and acquaints the *House*, That the *Lords* by their *Messengers* have sent to the *House* certain *Bills*: and then reading the *Title* of every *Bill*, delivereth them to the *Clerk* to be safely kept, and to be read, when they shall be call'd for.

Id. 179.

When *Bills* are thus pass'd by both *Houses*, upon three several *Readings* in either *House*; they ought for their last *Approbation*, to have the *Royal Assent*, which is usually deferr'd till the last day of the *Session*.
The

Passing of Bills.

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The *Royal Assent* is given in this sort. After some Solemnities ended, the *Clerk of the Crown* readeth the Title of the Bills in such Order as they are in Consequence: after the Title of every Bill is read, the *Clerk of the Parliament* pronounceth the *Royal Assent*, according to certain Instructions given him from his Majesty in that behalf.

To the *Subsidy Bill*, because it is the meer Gift of the Subject, the *Queens* Consent is not required for the passing it, but as it is joyn'd with her thankful Acceptance: nor to the Bill of *Pardon*, because it is originally her free Gift, no other Circumstance is required, than that the thankful acceptance thereof by the *Lords* and *Commons* be likewise expressed; it being but once read in either House, before it comes at last to be thus expedited. To all other Bills, either private or publick, the *Queens* express Consent, tho' in

Id. 181.
Vid. Towns.
Coll. 12, 49.
Vide Sir
S. d' Eweis
Jour. 467.

Towns. Coll.
49.

different words, is always requisite.

Id. 127.

Febr. 9. 1597. 39 Eliz. Her Majesty gave her *Royal Assent* to twenty four publick Acts, and nineteen private; and refused forty eight, which had pass't both Houses.

Townsf. 13.

If it be a Publick Bill, to which the King assenteth, the Answer is, *Le Roy le veult*, The King wills it.

If a private Bill, allow'd by the King, the Answer is, *Soit fait come il est desire*, Be it done, as is desired.

If a Publick Bill, which the King forbears to allow, *Le Roy se aviserà*, The King will consider.

Id. 12.

To the *Subsidy Bill*, *Le Roy remercie ses loyaux Sujets, accept leur Benevolence, & ainsi le veult*, The King thanks his loyal Subjects, accepts their Benevolence, and so wills it.

Townsf. Coll.

13. 49.

To the *General Pardon*, *Les Prelates, Seigneurs, & Commons an cest*

Passing of Bills.

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cest Parliament assemble au nom de toutes vous autres Subjets remer-
cient tres-humblement vostre Maje-
stie, & prient à Dieu que il vous
donne en sante, bon vie, & longue;
The Prelates, Lords, and Commons in
this Parliament assembled, in the
Name of all other your Subjects,
do most humbly thank your Ma-
jesty, and do pray God to give
you Health and a good and long
Life.

A private or particular Act is
always filed, but never enrolled.

Sir R. At-
kin's Argu-
ment, 57.

Every Bill that passeth the Par-
liament, shall have Relation to the
first day of the Parliament, tho' it
come in at the end of the Parlia-
ment: unless a Time be specially
appointed by the Statute, when it
shall commence.

Arc Parl.

45.

If a Bill be admitted to be read,
it is to be presented fairly written,
without any razure, or interlinea-
tion; together with a *Breviat* of
the Heads of the Bill; and unless it
be so tender'd, the *Speaker* may re-
fuse it.

Scobel 41.

Id. 42.

Until the Bill be open'd, no man may speak to it.

Townsh. Coll.

187.

An Act was read, to which no man offer'd to speak; whereupon Mr. *Speaker* stood up, and said, *That if no man speak, it must be ingrossed.*

Townsh. Coll.

134.

It is the usual Rule of the Law; That where the Numbers of the Affirmative and Negative are equal, *Semper presumetur pro negante.* The Negatives by Custom are to carry it.

Scobell 45.

When Votes are digested into a Bill, and that comes to be read, or passed, it is lawful to Debate or Argue against all, or any part thereof; to alter, or reject it: because Votes in order to a Bill are no further binding, but that the Bill is to be presented containing those Votes: and because the Bill gives occasion of a more large Debate, and being to pass into a Law; every Member hath Liberty to offer his Reasons against it, as well as give his Vote, as often

ten as it comes to a Question.

When a Bill has been read the ^{Ibid.} second time, and open'd, any Member may move to have it amended, but must speak but once to it; and therefore must take all his Exceptions to it, and every part of it, at one time; for in the Debate of a Bill no man may speak but once the same day, except the Bill be read more than once that day, and then he may speak, as often as it is read.

23 Junij 1604. It was agreed ^{Id.} 38. for a Rule, *If a Bill be continued in Speech from day to day, one may not speak twice to the Matter of the same Bill.*

CHAP. XVII.

Concerning Committees.

Sir Tho.
Smyth's
Common-
wealth 75.

Committees are such, as either the Lords in the higher House, or Burgesses in the lower House, do choose to frame the Laws upon such Bills as are agreed upon, and afterward to be ratified by the same Houses.

Rush. Coll.
557.

The proceeding in a Committee is more honourable and advantageous to the King, and the House; for that way leads most to the Truth; and it is a more open way, and where every man may add his Reason, and make Answer upon the hearing of other mens Reasons and Arguments.

Sir Simon
d'Ewes
Jour. 186.

For Referring a Bill to Committees, it is chiefly for Amendment
or

or Alteration thereof, after it hath been penned, and put into the House by some one or more private men.

June 1641. In the Afternoon, ^{2 Nalson} it being a considerable time before ^{319.} there were forty Members to make a House: Ordered, *That so soon as the House sits, and that the Serjeant comes to any Committee then sitting, to signifie to them that the House is sitting, that the Chair-man shall immediately come away to attend the Service of the House.*

35 Eliz. 1592. It was held to ^{Townsh. Call.} be against the Order of the House, ^{61.} *That a Bill should be committed* ^{Sir Simon d'Ewis Journ 476.} *before it was read.* ^{Col. 1.}

43 Eliz. 1601. By Order of the ^{Id. 189.} House agreed, *When a Bill is return'd from Commitment, the words must be twice read, which are amended, before the ingrossing thereof.*

Eodem tempore. By Order of ^{Id. 190.} the House, it was agreed upon, *That a Committee once made, and agreed upon, there shall not hereafter*

after be more Committees joynd unto them, for the same Bill; but for any other there may.

Id. 198.

Vid. Sir S.

d'Ewes

Journ. 630.

Col. 1.

Eodem. Sir Walter Raleigh speaking at a Committee, Sir Edward Hobby told him, He shou'd speak standing, that the House might hear him: to which Sir Walter Rawleigh reply'd, That being a Committee, he might speak sitting or standing.

Id. 208.

Vid. Sir S.

d'Ewes

Journ. 634.

Col. 2.

Eodem. It is a Rule in the House, That they, who have given their Voice against the Body of a Bill, cannot be Committees. And it was said by Mr. Wiseman, That by committing of a Bill, the House allow'd of the Body thereof, tho' they disallow'd of some Imperfections in the same: and therefore committed it to some chosen men in trust, to reform and amend any thing therein, which they found imperfect. And it is presumed, That he who will give his No to the committing of a Bill, at the Commitment, will be wholly against the Bill:

Bill: and therefore the House allowing of this Bill to be committed, are, in my Opinion, to disallow any that will be against the Body of the Bill, for being Committees. And so Resolved upon the Question.

Eodem. Resolved upon the Question, If any Committee speak against a Bill at the Commitment, he may speak again at the ingrossing thereof in the House, and have his free Voice. Townsh. 208.
Sir Simon
d'Ewes
Jour 635.
Col. 1.

II Nov. 1601. Ordered, That any Member of this House that hath been, or shall be a Committee in any Bill, may afterwards speak, or argue negatively to any such Bill, without Impeachment or Imputation of Breach of former Order. Memorials,
60, 61.
Vid. Townsh.
Coll.

Sometimes the House upon Debate doth pass some Votes to be the Heads of a Bill, or refer it to a Committee of the whole House to prepare such Heads. Scobell 44.

If the Exceptions to a Bill be such, that it may not be amended

at

at the Table, then the Question is for committing the Bill: But no Bill is to be committed without some Exceptions taken to it.

Townsh. Coll. 138. In the *House of Commons*, as well as in the *upper House*, after any Bill is committed upon the second Reading, it may be deliver'd indifferently to any of the said *Committees*.

Scobell 46. No *Proviso* or *Clauses* are to be tender'd to a Bill upon a second Reading; because if it be committed, it is proper to offer them to the *Committee*, without troubling the House: as 16 Jan. 1604. It was moved, *That sundry Provisos then tender'd, be offer'd to the Committee.*

Ibid. If the Question for Commitment pass in the Negative, then the Question is to be put for the ingrossing the Bill. But if the Question for ingrossing the Bill pass in the Negative, then the Question is to be put for rejecting the Bill.

If

If the Question for commit-^{Id. 47.}
ting the Bill pass in the Affirma-
tive, then a *Committee* is to be
named: of which all those that
took Exceptions at any Particu-
lars in the Bill (but not those who
spoke against the whole Bill) are
to be: and any Member that plea-
ses, may name one apiece, but not
more, to be of that *Committee*.

10 Nov. 1604. Declared for a ^{Ibid.}
Rule, *That at the naming of a Com-
mittee, if any man rise to speak,
the Clerk ought not to write.*

11 Nov. 1601. Resolved, and
order'd upon the Question, *That* ^{Ibid.}
*such Member as declares himself a-
gainst the Body or Substance of any
Bill, upon any the Readings there-
of, shall not hereafter be admitted
to be of a Committee in any such
Bill, according to former order
used in Parliament.*

Committees upon Bills have not ^{Ibid.}
usually been less then eight, some-
times twenty, seldom more in
former times, which ingaged
them

them to attend it, and speed it.

Id. 48.

12 April 1604. Upon a Motion made touching the slow Proceedings and Dispatch of such Bills and Businesses as were depending in the House, which grew, as was said, by the non-attendance of the *Committees*, Order'd, *That if eight of any Committee do assemble, they might proceed to a Resolution in any Business of the House.*

Ibid.

When a competent number are named, the *Speaker* useth to put the House in mind of appointing the Time and Place of their Meeting: at which Time the *Committee* are to meet, especially those who did make any Exceptions to the Bill: eight of the Persons named must be present to make a *Committee* (unless order'd otherwise in some Cases) but five may adjourn.

Ibid.

In some Cases the House hath order'd a *Committee* to withdraw into the *Committee-Chamber* presently, and bring it back, sitting the House.

Any

Any Member of the House may ^{Id. 49.}
be present at any select Committee;
but is not to give any Vote, unless
he be named to be of the Committee.

35 Eliz. 1592. Two or three <sup>Sir Simon
d'Ewes
Jour. 493.
Col. 2.</sup>
stood up to speak, striving who
might speak first. It was made a
Rule, *That the Chair-man shall
ask the Parties that would speak,
on which side they would speak,
whether with him that spake next
before, or against him: and the
Party that speaketh against the
last Speaker, is to be heard first.*

The Committee are first to read ^{Scobel 49.}
the Bill, and then to consider the
same by Parts.

The Preamble, if any be, is usually ^{Id. 50.}
consider'd after the other
Parts of the Bill: because upon
Consideration of the Body of the
Bill, such Alterations may therein
be made, as may also occasion the
alteration of the Preamble, which
will be best done last.

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sually consider'd after the other
Parts of the Bill: because upon
Consideration of the Body of the
Bill, such Alterations may therein
be made, as may also occasion the
alteration of the Preamble, which
will be best done last.

Ibid. The *Committee* may not raze, interline, or blot the Bill it self; but must in a Paper by it self set down the Amendments in this manner (in such a *Folio*, and such a *Line*, between such a Word and such a Word, or after such a Word; insert these words, or omit these words.)

Ibid. When the Amendments are all perfected, every one being voted singly, all of them are to be read at the *Committee*, and put to the Question, *Whether the same shall be reported to the House*: when the Vote is to be put, any Member of the *Committee* may move to add to those Amendments, or to amend any other part of the Bill.

Id. 52. 4 Junij 1607. The Bill touching the Union between *England* and *Scotland* having been committed, when the Amendments were reported, the whole Bill was by Order of the House first read, and then the Amendments by themselves:

selves : which is a single Precedent used only in a Case of great weight.

In the *Journal* 4 Junij 1607. Ibid. The Entry is, *When a Vote is once passed at a Committee, the same may not be alter'd but by the House.* Every Question upon the Voices of the *Committee* bindeth, and cannot be alter'd by themselves. And thus every Thing agreed to be reported, ought to be reported.

If the Vote of the *Committee* Id. 51. pass for reporting the Amendments to the House, then he of the Members of the *Committee* (which is commonly the *Chairman*) who is best acquainted with the Bill, is to be appointed to make the Report : which being done, that *Committee* is dissolved, and can act no more without a new Power.

3 Martij 1606. It was order'd, Ibid. That every *Committee*, when they proceed to the Amendment of any Bill committed to them, shall also

amend the Breviat annexed, and make it agree with the Bill.

Ibid.

Reports are usually to be received daily in the first place, after the House is full; except there be Bills engrossed, which are to take place, and publick Bills before private.

Id. 52.

Hakewell

148.

The Reporter must first acquaint the House, *That he is to make a Report from such a Committee, to whom such a Bill was committed*: and standing in his place, must read each of the Amendments, with the Coherence in the Bill; and opening the Alterations, and the Reasons of the *Committee* for such Amendments, until he hath gone through all: and then must (if he sit not in the Seat next the Floor) come from his place to the Bar, and so come up to the Table, and deliver both the Bill and Amendments to the *Clerk*, by whom he is to stand, while they are twice read, which is to be done by him (without reading

Concerning Committees.

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reading any words that are to be omitted, but only such as are to be inserted) before any man speak to any of them : and then the Bill, with the Amendments, is to be deliver'd to the *Speaker*.

After reading of the Amend- *Scobel 52.*
ments, any Member may speak against all, or any of the Amendments, and desire the Coherence to be read ; but he is to make all his Objections at once to all the Amendments, without speaking again.

Exceptions may be taken as *Id. 53.*
well to what is omitted out of the Bill by the *Committee*, as to what is amended.

Amendments in Bills ought to *Sir Simon d'Erves, Four. 573,*
be writ in *Paper*, not in *Parch-*
ment, and without any Indorse- *574.*
ment.

Upon any Report from a *Com-Scobel 53.*
mittee, the first Question ought to be, for agreeing with the Report, unless the House generally dislike it.

Id. 39.

4 Junij 1607. Agreed for a Rule, *That every Thing directed, and agreed to be reported, ought accordingly to be reported: but not every thing spoken or debated at the Committee.*

Ibid.

28 Julij 1641. Declared by the House, *That no Committee ought by Votes to determine the Right or Property of the Subject, without first acquainting the House therewith.*

Ibid.

6 Aug. 1641. Resolved, *That no Vote pass't at a Committee, and not reported, nor confirmed by the House, shall be any Rule or Direction for any Court of Justice to ground any Proceedings thereon.*

C H A P. XVIII.

*The Order and Power of
Grand Committees.*

A *Grand Committee* consists of Scabel 35. as many Members (at least) as constitute the House, less may not sit, nor act as a *Committee*; who have general Power to consider of any Matter touching the subject Matter referred, and to present their Opinions therein to the House, the better to prepare Matters of that Nature, or Bills therein, for the House: which may better be prepared by the Liberty that every Member hath in a *Grand Committee*, as well as in other *Committees*, to speak more than once to the same Business (if

P 4 there

there be cause) which is not permitted in the House.

Id. 49. Bills of great Concernment, and chiefly Bills to impose a Tax, or raise money from the People, are committed to a *Committee* of the whole House; to the end there may be opportunity for fuller Debate: for that at a *Committee* the Members have liberty to speak, as often as they shall see Cause, to one Question: and that such Bills being of general Concernment, should be most solemnly proceeded in, and well weighed.

Id. 35. *Grand Committees* have their Powers and Rules in other Circumstances given them in express words by the House: as to send for Witnesses, to hear Counsel, or assign them on either part to send for Records.

Id. 36. When any great Business is in Agitation that requires much Debate, or a Bill for a publick Tax is to be committed, the House doth use to Resolve into a *Grand Com-*

Committee of the whole House : which is done by a *Question*; and then the *Speaker* leaves the *Chair*; and thereupon the *Committee* makes choice of a *Chair-man*.

If more than one be generally *Scobell* 36. call'd to the *Chair*, any Member may stand up, and by Consent of the *Committee*, put a *Question* for one of those named to be the *Chair-man*.

19 *Jac.* 1. A Dispute being in *Ibid.* the *Committee*, which of two Members named shou'd go to the *Chair*, the *Speaker* was call'd to his *Chair*, and put the *Question*, *That Sir Edward Coke (one of the Persons named) shou'd take the Chair*; and then the *Speaker* left his *Chair*.

The *Chair-man* of the *Grand* *Ibid.* *Committee* is to sit in the *Clerk's* Place at the Table, and to write the Votes of the *Committee*.

If upon putting a *Question*, the *Chair-man* (who is to judge the *Ibid.* 38. Voices) have deliver'd his Opinion, *That the Yea's have it*, and any

any Member stand up, and say, *He believes the No's have it* (or contrariwise) the *Committee* is to divide within the House; the *Chair-man* directing the *Yea's* to one side of the House, and the *No's* to the other, and then he is to appoint one of each to count the Numbers, and report them: which is to be done in the same Order, as in the House, saving that the Obedience is only twice in the *Committee*, thrice in the *House*: if the Number be equal, the *Chair-man* hath the casting Voice; otherwise he hath none in the *Committee*.

Ibid.

When the *Committee* hath gone through the Matter referred to them, the *Chair-man* having read all the Votes, is to put the Question, *That the same be reported to the House*: if that be Resolved, he is to leave the *Chair*, and the *Speaker* being again call'd to the *Chair* (or at the next Sitting of the House, if it be then adjourn'd) the

the *Chair-man* is to report what hath been resolved at the *Committee*, standing in his usual Place, from whence (if it be not in the Seat next the Floor) he is to go down to the Bar, and so to bring up his Report to the Table.

If the *Committee* cannot perfect ^{Ibid.} the Business at that Sitting, they may not adjourn, as other *Committees*; but a Question is to be made for reporting to the House, and that leave be ask'd, *That the Committee may sit at another Time on that Business.*

But if, as it sometimes falls out, ^{Ibid.} the Matter hath received a full Debate in the *Committee*, and it is judged fit to be Resolved in the House, the *Speaker* is again call'd to the *Chair* for that purpose.

In other Things the Rules of ^{Ibid.} 39. Proceedings are to be the same, as are in the House.

4 Junij 1607. Agreed for a ^{Ibid.} Rule, *That every Question upon the Voices of a Committee bindeth,*
and

and cannot be alter'd by themselves.

Ibid.

Every Thing directed, and agreed to be reported, ought to be accordingly reported: but not every Thing spoken, or debated at a Committee.

Id. 36.

15 Maij 22 Jac. 1. Upon Complaint from the Grand Committee for Grievances, That they had sent several Warrants for divers Persons to bring in their Patents, which they had not done: the House order'd the Serjeant at Arms to send for them.

Id. 9.

The Committee for Trade is sometimes made of a Grand Committee of the whole House, as in 21 Jac. 1.

Ibid.

The Committees for Religion, Grievances, and Courts of Justice, are always Grand Committees of the House, which are to sit in the Afternoon, upon such days as the House doth appoint to them respectively.

Id. 36.

8 & 13 Martij 21 Jac. 1. Upon Report from the Committee for Trade

Trade (which then was a *Grand Committee*) the House was moved for their Order to the *Merchants Adventurers* to bring in their Patents, and that the Inventor of the pretermitted Customs shou'd attend the *Committee*.

The *Commons*, upon Debate of what fell from his Majesty, and ^{Rush.Coll.} 225. the *Lord Keeper*, turned the House into a *Grand Committee*, order'd the *Doors to be lock'd*, and no Members to go forth; and that all Proceedings in all other Committees shall cease, till the House come to a Resolution in this Business.

C H A P. XIX.

Concerning standing Committees.

4 Inst. 11. **T**H E *Commons* being the General Inquisitors of the Realm, have principal Care in the Beginning of the *Parliament*, to appoint days of *Committees*, viz. of *Grievances* (both in the *Church* and *Commonwealth*) of *Courts of Justice*, of *Priviledges* and *Advancement of Trade*.

Scobel 9. In *Parliament* there have usually been five standing *Committees* appointed in the Beginning of the *Parliament*, and remaining during all the Session: other *Committees* were made occasionally, and dissolved, after the Business committed to them was reported.

Standing

Standing Committees are for

{	<i>Priviledges and Elections.</i>	
	<i>Religion.</i>	
	<i>Grievances.</i>	
	<i>Courts of Justice.</i>	
	<i>Trade.</i>	<i>Ibid.</i>

These *Committees* when they ⁴ *Inst.* 12. meet, they elect one of them to sit in their *Chair*, in likeness of the *Speaker*. The *Committee* may examine, and vote the Questions handled by them; and by one, whom they appoint, report their Resolution to the House; and the House sitting, the *Speaker* to determine the same by Question.

The *Committees* for *Religion*, *Scobel* 9. *Grievances*, and *Courts of Justice*, are always *Grand Committees* of the House, which are to sit in the Afternoon, upon such days as the House doth appoint to them respectively.

The *Committee* for *Trade* hath ^{*Ibid.*} sometimes been a select *Committee*,
par-

particularly named; and all such Members as shou'd come to it, to have Voices, as in Nov. 1640. Sometimes a *Grand Committee* of the whole House, as 21 Jac. 1.

Id. 10.

The *Committee* for *Priviledges* and *Elections* hath always had the Precedence of all other *Committees*; being commonly the first *Committee* appointed, and ordinarily the first day after, or the same day the *Speaker* did take his Place.

Ibid.

This *Committee* is constituted of particular Numbers named by the House.

Ibid.

21 Jac. 1. Upon naming a *Committee* for *Priviledges* and *Elections*, a Motion was made, that all that come shou'd have Voices, but insisted on to be contrary to all former Precedents. A Question was put, *Whether all that come should have Voices at the Committee*, and pass't in the Negative: Another Question being put, *Whether the Persons nominated only shou'd be of the Committee*, it was resolved in the Affirmative.

In

In the *Journal* 26 Feb. 1600. 12.11.
 42. *Eliz* The Power anciently gi-
 ven to this *Committee* is, to examin-
 and make Report of all Cases
 touching Elections and Returns,
 and all Cases for Priviledge as may
 fall out, during the *Parliament*.
 But in other *Parliaments*, both be-
 fore and since, that Power doth
 not appear to have been given
 them so absolutely, but Matters of
 Priviledge were, upon Information
 to the House, there heard, and not
 in a *Committee*, unless in some spe-
 cial Cases, wherein there was
 Cause of Examination, or some Pre-
 paration of a Charge.

Council may be admitted at 12.11.
 that *Committee*.

The Power of this *Committee* 12.12.
 usually was (as it is enter'd Nov.
 1640.) to examine and consider
 all Questions which shall grow and
 arise in that *Parliament* about E-
 lections, Returns, and other Privi-
 ledges. Or (as in 1 Jac. 1.) this
Committee are to examine all Mat-

Q

ters

particularly named; and all such Members as shou'd come to it, to have Voices, as in Nov. 1640. Sometimes a *Grand Committee* of the whole House, as 21 Jac. 1.

Id. 10.

The *Committee* for *Priviledges* and *Elections* hath always had the Precedence of all other *Committees*; being commonly the first *Committee* appointed, and ordinarily the first day after, or the same day the *Speaker* did take his Place.

Ibid.

This *Committee* is constituted of particular Numbers named by the House.

Ibid.

21 Jac. 1. Upon naming a *Committee* for *Priviledges* and *Elections*, a Motion was made, that all that come shou'd have Voices, but insisted on to be contrary to all former Precedents. A Question was put, *Whether all that come should have Voices at the Committee*, and pass't in the Negative: Another Question being put, *Whether the Persons nominated only shou'd be of the Committee*, it was resolved in the Affirmative.

In

In the *Journal* 26 Febr. 1600. Id. 11.

42 *Eliz* The Power anciently given to this *Committee* is, to examine and make Report of all Cases touching Elections and Returns, and all Cases for Priviledge as may fall out, during the *Parliament*. But in other *Parliaments*, both before and since, that Power doth not appear to have been given them so absolutely, but Matters of Priviledge were, upon Information to the House, there heard, and not in a *Committee*, unless in some special Cases, wherein there was Cause of Examination, or some Preparation of a Charge.

Council may be admitted at Id. 11. that *Committee*.

The Power of this *Committee* Id. 12. usually was (as it is enter'd Nov. 1640.) to examine and consider all Questions which shall grow and arise in that *Parliament* about Elections, Returns, and other Priviledges. Or (as in 1 Jac. 1.) this *Committee* are to examine all Mat-

Q

ters

ters questionable touching Privileges and Returns; and to acquaint the House with their Proceedings from Time to Time, so as Order may be taken according to the Occasion, and agreeable with ancient Customs and Precedents.

Ibid.

And to the end these Questions may be speedily determin'd, and the House may know their Members; Days are usually assign'd, beyond which there shall be no Questioning a former Election.

Ibid.

So in the Parliament 21 Jac. 1. it was order'd, *That all Petitions about Elections and Returns shou'd be preferred to the Committee of Priviledges, within a Fortnight from that day, or else to be silenced for that Session.*

Id. 13.

16 Apr. 1640. Order'd, *That those who would question Elections, shou'd do it within ten days, by Petition.*

Ibid.

6 Nov. 1640. Order'd, *That all such as will question Elections now return'd, shall do it in fourteen days,*

days, and so within fourteen days
after any new Return.

Some Questions have been
(where there have been double In-
dentures return'd for several Per-
sons for the same Place) whether
all, or any, or which shall sit. The
general Rule and Practise hath
been in such Case, that neither one
nor other shall sit in the House, till
it were either decided or order'd
by the House.

17 Apr. 19 Jac. 1. Order'd
That no Petition shall be received
by a Committee, but openly at a
Committee, and read at the Com-
mittee, before the Party go that
preferred it, and the Parties Name
that preferred it, be subscribed.

In the Parliament 21 Jac. 1.
Resolved, That all Affidavits to be
taken in any Court, concerning Ele-
ctions, Returns, or any Thing de-
pending thereupon, shou'd be reject-
ed, and not hereafter to be used.

Tho' the Committee examine
not upon Oath, yet they may pu-

nish any that shall testifie untruly,
of which there was an Instance in
the Case of one *Damport*.

Id. 14.

Sir *Francis Popham*, being re-
turn'd a Burgess for *Chippenham*
by one Indenture, and another Per-
son return'd for the same Place by
another Indenture; it was moved
he might be admitted into the
House, till the Matter were de-
termin'd. But he was not so ad-
mitted, and it was referred to the
Committee for Priviledges.

Id. 15.

21 *Jac* 1. Two Indentures were
return'd for *Southwark*: the one
returned *Tarrow* and *Mingy*; the
other *Tarrow* and *Bromfeild*. Up-
on a Report from the *Committee*
of *Elections*, it was Resolved, *That*
the Election and Return for Yar-
row shou'd stand good, and that he
shou'd sit in the House.

Ibid.

22 *Martij* 21 *Jac* 1. Sir *John*
Jackson and Sir *Thomas Beaumont*
were both return'd for one Bur-
gesse's Place for *Pontefract*. Or-
der'd, *That the Committee take the*
Election

Election into consideration to morrow, and that in the mean time the Parties forbear to come into the House.

C H A P. XX.

A Session of Parliament.

TH E Passing of any Bill, or ⁴ Inst. 27. Bills, by giving the *Royal Assent* thereto, or the giving any Judgment in *Parliament*, doth not make a *Session*: but the *Session* doth continue till that *Session* be prorogued, or dissolved: And this is evident by many *Presidents* in *Parliament* ancient and late.

14 Ed. 3. On the first *Monday* ^{Ibid.} a Grant of, &c. being given to the *King*, was made a Statute, and pass't both Houses, and had the *Royal Assent* thereunto: yet after

this the *Parliament* continued, and divers *Acts* made, and *Petitions* granted.

Ibid.

3 *Rich. 2.* Declared by *Act* of *Parliament*, That the killing of *John Imperial*, *Ambassador* of *Genoa*, was *High Treason*: yet the *Parliament* continued long after, and divers *Acts* made, &c.

Ibid.

7 *Hen. 4.* An *Act* made for certain *Strangers* departing the *Realm*, &c. yet the *Parliament* continued till *Dec. 8 Hen. 4.*

Ibid.

1 *Hen. 7.* The *Attainders* of such as were returned *Knights*, *Citizens* and *Burgesses*, were reversed by *Act* of *Parliament*, before they could sit in the *House of Commons*, and the *Parliament* continued, and divers *Acts* made.

Ibid.

33 *Hen. 8.* At the beginning of the *Parliament*, the *Bill* of *Attainder* against *Queen Catherine Howard* pass't both *Houses*: yet the *Parliament* continued, and divers *Acts* pass't.

Ibid.

Tho' *Bills* pass both *Houses*, and the

A Session of Parliament. 231

the *Royal Assent* be given thereto, there is no *Session* until a *Prorogation*, or a *Dissolution*.

The Diversity between a Pro-^{Ibid.}rogation and an Adjournment, or Continuance of the *Parliament*, is, that by the *Prorogation* in open Court, there is a *Session*; and then such Bills as pass't either, or both Houses, and had no *Royal Assent* to them, must at the next Assembly begin again.

Every several *Session of Parliament* is in Law a several *Parliament*: but if it be but adjourned,^{Ibid. Hutton 61. Brook tit. Parl. 86.} or continued, then there is no *Session*; and consequently all things continue in the same state they were in before the Adjournment or Continuance.

The Titles of divers *Acts of Parliament* be, *At the Session holden by Prorogation, or by Adjournment and Prorogation*; but never by Continuance or Adjournment *tantum*. And the usual Form of Pleading is, *ad Sessionem tentam, &c. per Prorogationem.* Q 4 The^{4 Inst. 27.}

4 In R. 28.

The Adjournment or Continuance is much more beneficial for the *Commonwealth* for expediting of Causes, than a Prorogation.

Rush. Coll.
537.

The King desired the *House of Commons* not to make a Recess in the *Easter Holy-days* : This Message for *Non-recess* was not well-pleasing to the House Sir Robert Philips first resented it, and took Notice, that in 12 and 18 Jac. 1. upon the like Intimation, the House Resolved, *It was in their power to adjourn or sit.* Hereafter, said he, *this may be put upon us by Princes of less Piety. Let a Committee consider hereof, and of our Right herein, and to make a Declaration.* Sir Edward Coke said, *The King makes a Prorogation, but this House Adjourns it self: The Commission of Adjournment we never read, but say, this House adjourns it self. If the King write to an Abbot for a Coroddy, for a Vallet, if it be ex rogatu, tho' the Abbot yields to it, it binds not.*

A Session of Parliament.

233

not. Therefore I desire that it be entred, that this be done ex Rogatu Regis.

And this Matter touching his Majesties pleasure about the Re-
cels, was referred to a Committee, and to consider the Power of the House to adjourn it self.

The Sovereign may adjourn the Parliament, as well as the Parliament adjourns it self.

When a Parliament is call'd, and doth sit, and is dissolved, without any Act of Parliament passed, or Judgment given, it is no Session of Parliament, but a Convention.

18 Rich. 2. The Petitions of the Commons were answered, and a Judgment given in the King's Bench reversed, but no Act pass't; yet without Question it was a Session, else the Judgment should not be of force.

Many times Judgments given in Parliament have been executed, the Parliament continuing, before any Bill pass't.

If

Hutton 81.

If divers Statutes be continued till the next *Parliament*, or next *Session*, and there is a *Parliament* or *Session*, and nothing done therein as to Continuance; all the said Statutes are discontinued, and gone.

Hakewel
180.

8 Apr. 1604. In the last *Session* of the first *Parliament* of K. James the first, the House being desirous to have a Bill forthwith pass't, declared, *That the Royal Assent to one Bill, or more, did not dissolve the Session, without some special Declaration of his Majesties Pleasure to that purpose.*

Ibid.

1 & 2 Phil. & Mar. The King and Queen came of purpose into the *Parliament House* to give their Assent to Cardinal Pool's Bill; and Resolved upon the Question by the whole House, *That the Session was not thereby concluded, but they might proceed in their Business, notwithstanding the Royal Assent given.* But for more Security, it is usual to insert a *Proviso* to that purpose.

If

The proper Laws, &c.

235

If there be divers *Sessions* in one *Parliament*, and the *King* signs not a Bill till the last ; there all is but one and the same day, and all shall have relation to the first day of the first *Session* ; and the first day and the last are but one *Parliament*, and one and the same day ; unless special mention be made in the *Act*, when it shall take its force.

Art. Parl.
93.
Crompton's
Four. 7. b.
12 b.

C H A P. XXI.

The proper Laws and Customs of Parliament.

TH E *Laws, Customs, Liberties, and Priviledges* of *Parliament* are better to be learn'd out of the *Rolls of Parliament*, and other *Records*, and by *Precedents*, and continual *Experience*, then can be expressed by any one mans Pen.

As

4 Inst. 15.

As every Court of Justice hath Laws and Customs for its Direction, some by the Common Law, some by the Civil and Canon Law, some by peculiar Laws and Customs, &c. so the High Court of Parliament *suis propriis Legibus, & Consuetudinibus subsistit.*

Ibid.

It is *Lex & Consuetudo Parliamenti*, that all weighty Matters in any Parliament moved, concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determin'd, adjudged, and discussed by the Course of Parliament, and not by the Civil Law, nor yet by the Common Laws of this Realm used in more Inferior Courts: which was so declared to be *secundum Legem, & Consuetudinem Parliamenti*, concerning the Peers of the Realm, by the King, and all the Lords Spiritual and Temporal: and the like *pari Ratione* is for the Commons, for any thing moved or done in the House of Commons: and the rather, for that

that by another Law and Custom of Parliament, the King cannot take notice of any thing said or done in the House of Commons, but by the Report of the House of Commons; and every Member of Parliament hath a Judicial Place, and can be no Witness. And this is the Reason that Judges ought not to give any Opinion of a Matter of Parliament, because it is not to be decided by the Common Laws, but *secundum Legem & Consuetudinem Parliamenti*: and so the Judges in divers Parliaments have confessed. And some hold, That every Offence committed in any Court, punishable by that Court, must be punish'd (proceeding criminally) in the same Court, or in some higher, and not in any Inferior Court; and the Court of Parliament hath no higher.

By the ancient Law and Custom ^{Id. 14.} of Parliament, a Proclamation ought to be made against being arm'd, against Games, Plays, and Strange Shews,

Shews, &c. during the *Parliament*; that the *Parliament* may not be disturbed, nor the Members thereof (who are to attend arduous and urgent Business) be not withdrawn.

Townsh. Coll.

116

Vide Sir

S. d'Ewes

Four. 505.

Col. 1.

Dec. 15. 1597. Resolv'd, according to the ancient Custom of the House, that all the Members of the same, which did speak against passing of the Bill, shou'd go forth of the House, to bring the Bill into the House again, together with the residue of the Members which went out before, with the passing of the said Bill. All the Members of the House being gone forth except Mr. *Speaker* and the *Clerk*, Mr. *Contraller* brought in the Bill in his hand, accompany'd with all the Members of the House, and deliver'd the said Bill to Mr. *Speaker*.

Id. 117.

Sir *Simon*

d'Ewes

Four. 574.

Col. 2.

17 Dec. 1597. The same Ceremony on the like Occasion omitted, upon a Motion of the *Speaker*; and order'd accordingly upon the Question.

Townsh. 332.

18 Dec. 1601. As the *Speaker* was

was coming to the House in the Morning, the Pardon was deliver'd unto him, which he took, and deliver'd it to the House: which they sent back again, because it was not brought according to Course.

The Subsidy of the Clergy was ^{11.333.} sent in a Roll, according to the usual Acts: to which Sir Edward Hobby took Exceptions, because it was not sent in a long Skin of Parchment under the Queens Hand and Seal: so it was sent back, and then the other was sent.

Si les Commons grant Poundage ^{Brook 119.} pur quatre Ans, & les Seigneurs ^{4.} grant nisi pur deux Ans; le Bill ne ^{Crompt. 81} serra re-bayl al Commons: mes si les Commons grant nisi pur deux Ans, & les Seigneurs pur 4 Ans, la ceo serra redeliver al Commons. Et in cest case les Seigneurs doivent faire un Scedule de leur Entent, ou d'endorcer le Bill en cest Form, Les Seigneurs ceo assentont, pur durer pur quatuor Ans: Et quant les Commons ont le Bill arere, & ne volent assenter

*a ceo, ceo ne poet estre un Act: mes
si les Commons volent assenter, don-
ques ils endorse leur Respons sur le
Margent de bas deins le Bill en
tiel Form; les Commons sont assen-
tuz al Scedule les Seigneurs, a
mesme cestuy Bill annex; Et donques
ferra bayl al Clerk del Parliament.*

If the Commons grant Poun-
dage for four years, and the Lords
grant but for two years; the Bill
shall not be sent back to the Com-
mons: but if the Commons grant
but for two years, and the Lords
for four years, there it shall be re-
delivered to the Commons. And
in that Case the Lords may make
a Schedule of their intent; or En-
dorse the Bill in this Form, The
Lords do assent to the continuing
for four years. And when the
Commons have the Bill again, and
will not assent to it, that cannot be
an Act: but if the Commons will
assent, then they endorse their An-
swer on the Margin below within
the Bill, in this Form; The Com-
mons

mons. do assent to the Schedule of the Lords annexed to this Bill and then it shall be sent to the Clerk of the Parliament.

The Custom and Privilege of this House hath always been, first to make offer of the Subsidies from hence, then to the upper House; except it were that they present a Bill unto this House with desire of their Assent thereto, and then to send it up again. And Reason it is, that we should stand upon our Privilege, seeing the Burden resteth upon us as the greatest Number; *per Francis Bacon, 35 Eliz. 1592.*

Vide Sir S. d'Ewes Journ. 483. Col. 2.

The Lord Chancellor in Parliament offer'd the Commons a Writ to deliver their Burgess; but they refused it, as being clear of Opinion, That all their Commandments and Acts were to be done and executed by their Serjeant, without Writ.

Peijer's Miscell. Parl. 4. in Margins

It is the Law and Custom of Parliament, That when any new Device is moved on the King's behalf

4 Inst. 14. 34. Rot. Parl. 13 E. 3. n. Cott. Records f. 17. in n. 6, 9.

in Parliament, for his Aid; or the like; the Commons may answer, That they tender the Kings Estate, and are ready to aid the same; only in this Device they dare not agree, without Conference with their Countreys; whereby it appeareth, That such Conference is warrantable by the Law and Custom of Parliament.

4 Inst. 14.

It is to be observed, tho' one be chosen for one particular County, or Borough, yet when he is return'd, and sits in *Parliament*, he serveth for the whole Realm: for the End of his coming thither (as in the Writ of his Election appeareth) is general, *ad faciendum, & consentiendum, &c.*

4 Inst. 17.

If Offences done in *Parliament* might have been punish'd elsewhere, it shall be intended, that at some time it would have been put in use.

Colt. Lib.
Er. b.

As Usage is a good Interpreter of Laws, so Non-usage, where there is no Example, is a great In-

Intendment, that the Law will not bear it.

Not that an *Act of Parliament* ^{Co. lit. 81. b.} by Non-user can be antiquated or lose his force, but that it may be expounded or declared how the *Act* is to be understood.

There is no *Act of Parliament* ^{4 Inst. 29.} but must have the Consent of the *Lords*, the *Commons*, and the *Royal Assent* of the *King*: and whatsoever passeth in *Parliament* by this threefold Consent, hath the Force of an *Act of Parliament*.

The Difference between an *Act* ^{Ibid.} of *Parliament*, and an *Ordinance in Parliament* is, for that the *Ordinance* wanteth the threefold Consent, and is ordained by one or two of them.

Some *Acts of Parliament* are in- ^{Ibid.}troductory of a new Law, and some be declaratory of the ancient Law, and some be of both kinds, by addition of greater Penalties, or the like. Some *Acts* are general, and some private, or particular.

Ibid.

33 H. 6. f.

18. a.

33 H. 8.

Brook

Parl 86. d.

Relation

35.

4 Inst. 28.

Vide Sir

S. d'Ewes

Journ. 550.

Col. 1, 2.

All *Acts of Parliament* relate to the first day of *Parliament*, if it be not otherwise provided by the *Act*.

The *House of Commons* is to many Purposes a distinct Court, and therefore is not prorogued or adjourned by the Prorogation or Adjournment of the *Lords House*: but the *Speaker*, upon signification of the *King's Pleasure*, by the Assent of the *House of Commons*, doth say, *This Court doth Prorogue or Adjourn it self*. And then it is Prorogued or Adjourned, and not before.

Townsh. coll.

101, 102.

Vide Sir

S. d'Ewes

Journ. 550.

Col. 1, 2.

39 Eliz. 1597. Nov. 5. Through a meer Mistake and Error of the *Speaker* and themselves, the *House* conceived themselves to have been Adjourned by the *Lord Keeper*, the first day of this *Parliament*, to this present day.

Ibid.

When it is dissolved, the *House of Commons* are sent for up to the *higher House*, and there the *Lord Keeper*, by the *King's Commandment*,

ment, dissolveth the *Parliament*, and not before.

A *Parliament* cannot be discontinued or dissolved but by Matter of Record, and that by the *King* alone. *Hutton 62.*

The *King*, at the time of the Dissolution, ought to be there in Person, or by Representation; for as it cannot begin without the Presence of the *King*, either in Person or by Representation; so it cannot end, or be dissolved without his Presence either in Person or by Representation. *4 Inst. 28.*

Nihil enim tam Conveniens est naturali æquitati, unumquodque dissolvi eo ligamine quo ligatum est. *Bracton.*

By the Statute of 33 *H.8. c.21.* *Ibid.* it is declared by *Act of Parliament*, That the *King's Letters Patents* under his great Seal, and signed with his Hand, and declared and notified in his Absence to the Lords Spiritual and Temporal, and Commons assembled in the higher House of Parliament, is, and ever was, of

as good strength and force, as if the King's Person had been there personally present, and had assented openly and publickly to the same.

4 Inst. 34.
35.

In the Lords House, the Lords give their Voices from *puisne Lord seriatim*, by the word of [Content] or [Not Content] The Commons give their Voices upon the Question, by *Yea*, or *No*.

4 Inst. 43.
Crompton
4 b.

Every Lord Spiritual and Temporal, and every Knight, Citizen, and Burgeß shall upon Summons come to the Parliament, except he can reasonably and honestly excuse himself, or else he shall be amerced, &c. that is respectively a Lord by the Lords, and one of the Commons by the Commons.

Ibid.
Crompton
4 b.

By the Statute of 6 Hen. 8. c. 16. No Knight, Citizen, or Burgeß of the House of Commons shall depart from the Parliament without Licence of the Speaker and Commons: the same to be entred of Record in the Book of the Clerk of the Parliament, upon pain to loose their Wages.

Sick,

Sickness is no cause to remove ^{4 Inst. 2.}
any Knight, Citizen, or Burgeß of
the House of Commons.

18 Eliz. 1575. Resolved by the <sup>Sir Simon
d'Ewes
Journ. 244.
Col. 2.</sup> House, That any person being a
Member of the same, and being ei-
ther in Service of Ambassage, or else
in Execution, or visited with Sick-
ness, shall not in any ways be ama-
wed from their place in this House,
nor any other to be during such
Time of Service, Execution, or Sick-
ness, elected.

31 Eliz. 1588. It was assented ^{Id. 439.}
to by the whole House, That none
after the House is set, do depart
before the rising of the same House,
unless he do first ask leave of Mr.
Speaker, on pain of paying six pence
to the Use of the Poor.

If a Lord depart from Parlia- ^{4 Inst. 44.}
ment without license, it is an Of-
fence done out of the Parliament,
and is finable by the Lords: and
so it is of a Member of the House
of Commons, he may be fined by the
House of Commons.

4 Inst. 56.

Ret. Parl.

31 H. 6. n.

27.

Herbert's

Hen. 8. 136.

It doth not belong to the Judges to judge of any Law, Custom, or Priviledge of Parliament.

Cardinal *Wolsey* coming to the lower House of Parliament, told them, That he desired to reason with them, who opposed his Demands: but being answered, That it was the Order of that House to bear, and not to reason, but among themselves, the Cardinal departed.

Scobell 84.

If any sit in the House, who are not returned by the Clerk of the Crown in Chancery, it is accounted a great Crime, and severely punish'd.

Ibid.

5 Martij 1557. 4 & 5 Ph. & Mar. For that *Christopher Pern* affirmed, That he is return'd a Burgess for *Plimpton* in *Devon*, and hath brought no Warrant thereof to the House, nor is return'd hither by the Clerk of the Crown, by Book or Warrant; he is awarded to be in the Custody of the Serjeant, till the House have further consider'd.

13 Eliz. 1571. The House was call'd,

call'd, and thereupon *Edward Lewk-* Sir Simon
d'Ewys
nor, John Bullock, Nicholas Plum- Four. 156.
Col. 1, 2.
tree, Edward Goodwyn, and John
Garnons were commanded to at-
tend the Order of this House to
morrow, for that the House being
this day called, they had entred in-
to the House, and had not as then
been returned by the *Clerk of the*
Crown; except *Garnons*, whose Case
is, for that he is said to be Excom-
municated.

9 Jan. 1562. For that it seem'd Scobell 89.
to the House, being very full, that
there were a greater Number than
was return'd; therefore the Names
were immediately call'd over, and
as they were call'd, departed out
of the House.

7 Febr. 1588. The House was Ibid.
call'd, and every one answer'd to his
Name, and departed out of the
House, as they were call'd.

Chiefly the Calling of the House Ibid.
is, to discover what Members are
absent without leave of the House,
or just Cause; in which case Fines
have been imposed. If

Ibid.

If the House be call'd, the manner has been to call over the Names, and each Member to stand up at the mention of his Name, uncovering his head. Such as are present are marked, and the Defaulters call'd over again the same day, sometimes the day after, sometimes summon'd, sometimes sent for by the *Serjeant*.

Ibid.

Upon Calling the House, if the Person be present, he riseth up bare-headed, and answereth: if absent, he is either excused (and so entred, *Licentiatum per speciale Servitium, excusatur ex gratia, or ægrotat*) or if none excuse him, he is entred, *Deficit*.

Id. 86.

Vide Sir
S. d'Erves
Jour. passim

That no man may sit in the House, till he be legally return'd, appears by several Instances of Persons who were not Members, and for coming into the House, were brought to the Bar, and some committed, and some sworn, before they departed, to keep secret what they had heard there.

5 Apr.

Customs of Parliament.

751

5 Apr. 1571. 13 Eliz. Thomas ^{Sir Simon d'Ewes} Clerk and Anthony Bull of the Inner ^{Jour. 156.} Temple, London, Gent. were by this ^{Col. 1.} House committed to the *Serjeants Ward*, until further Order shou'd be taken with them, for that they presumed to enter into this House, and were no Members of the same, as themselves at the Bar confessed.

18 Eliz. 1575. Charles Johnson ^{Id. 248.} of the *Inner Temple* Gent. committed to the *Serjeants Ward*, till further Order be taken by this House, for coming into this House this present day, the House sitting, confessing himself to be no Member of this House. ^{Col. 1.}

27 Eliz. 1584. Charles Morgan ^{Id. 334.} Gent. Servant to Sir George Cary, ^{Col. 1.} Knight of a Shire, being himself no Member of this House, was found to be standing within the House next to the Door, and as it was thought of meer ignorance and simplicity, without any evil purpose or meaning, and therefore was committed by Order of the House to the *Serjeants Ward*. 30 Nov.

Ibid. Col. 1.

30 Nov. *eodem* An. Richard Robinson being found to be sitting in the House by the space of two hours (while several Speeches were made) was stript to his Shirt, and his *Pockets* searched; and being brought to the Bar, was censured by the House (after taking the Oaths) to suffer Imprisonment in the *Serjeants Ward* till Saturday next, and then (having sworn to keep secret what he had heard) to be released.

Id. 394.
Col. 2.

28 Eliz. 1586. Edmond Moor and John Turner presumed to come into the House, being no Members, and upon their Submission discharged, because it was done of simplicity and meer ignorance. *Id.* 394.
Col. 2. So John Legg, *Vide id.* 486.
Col. 2. So Matthew Jones, *Id.* 511.
Col. 1. So William Hanner, *Id.* 288.
Col. 2.

Scobell 87.

Petitions are usually presented by Members of the same County. If they be concerning private Persons, they are to be subscribed, and the Persons presenting them call'd in

in to the Bar, to avow the Substance of the Petition; especially if it be a Complaint against any.

18 Nov. 1640. One *Vivers* presented a Petition in the Name of the *Mayor, Aldermen, Burgeses*, and other Inhabitants of *Banbury*, was call'd in, and did acknowledge the Hand to the Petition to be his, and that he did deliver it by Order, and on behalf of the Town of *Banbury*, and thereupon it was committed. *Ibid.*

The like in the same *Parliament*, *Ibid.* upon reading the Petition of one *Ward of Salop*; and likewise on reading the Petition of *Henry Hogan*.

Tho' freedom of Speech and Debates be an undoubted Priviledge of the House, yet whatsoever is spoken in the House, is subject to the Censure of the House. *Scabel 72.*

Tho' the *Committee* examine not upon Oath, yet they may punish any that shall testifie untruly. *Id. 17.*

In the *Parliament*, if the greatest part of the *Knights of the Shire* do assent ^{93.}

assent to the making of an Act of Parliament, and the lesser part will not agree to it; yet this is a good Act or Statute to last in perpetuum, and that the Law of Majoris partis is so in all Councils, Elections, &c. both by the Rules of the Common Law, and the Civil.

After fol.
768.

Tenants d'ancien Baronies sont discharge de Contribution al Gages de Chevaliers del Parliament; quia leur Seigneurs servent par eux in Parliament.

Tenants of ancient Baronies are discharged from Contribution to the Wages of Knights of Parliament, because their Lords serve for them in Parliament.

Scobell 14.

Apr. 1640. It was ordered in that Parliament, That if any sit in that House, that are return'd by more Indentures than usual, they should withdraw till the Committee for Priviledges had further order'd.

Id. 40.

In the beginning of every Parliament, some Persons have been appointed to consider of such Laws

as

as had continuance to the present Session, whether they were fit to be continued, or determin'd : as also of former *Statutes* repealed or discontinued, whether fit to be reviewed, and what are fit to be repealed.

Any Member of the House may ^{ibid.} offer a Bill for publick good, except it be for imposing a Tax : which is not to be done, but by Order of the House first had.

A private Bill that concerns a ^{21d. 4n} particular Person, is not to be offer'd to the House, till the leave of the House be desired, and the Substance of such Bill made known, either by Motion or Petition.

It hath at some times been ordered, ^{Hatw} That every one that ¹³⁵ presenteth a private Bill should pay five pounds to the poor, as in 43 Eliz. towards the end of the *Parliaments*, when they were troubled with much Business, but it holdeth not in other *Parliaments*.

Nevertheless the *Speaker* had ^{Scobell 4r} liberty to call for a private Bill to be

be read every Morning : and usually the Morning is spent in the first reading of Bills ; until the House grow full.

Ibid.

If any publick Bill be tender'd ; the Person who renders the Bill ; must first open the Matter of the Bill to the House, and offer the Reasons for admitting thereof : and thereupon the House will either admit, or deny it.

Id. 46.

7 Martij 1606. Mr. Hadley being assigned of a Committee to confer with the Lords desired to be seated, he being in Opinion against the Matter it self. And it was conceived for a Rule, *That no man was to be employ'd in any Matter, that had declared himself against it :* and the Question being put, it was resolved, Mr. Hadley was not to be employ'd.

C H A P. XXII.

Priviledge of Parliament.

THE Priviledge of Tenants in Ancient Demefne must be as ancient as their Tenure and Service, for their Priviledge comes by reason of their Service, and their Service is known by all to be before the Conquest, in the time of *Edward the Confessor*, and in the time of the *Conqueror*.

Sir R. At-
kin's Argu-
ment, 18.
Vide Coke
9 Rep. in
Pref.

Every man must take notice of all the Members of the House re- turn'd of Record, at his Peril.

4 Inst. 23,
24.

Otherwise it is of the Servant of any of the Members of the House.

Id. 24.

A Member of *Parliament* shall have Priviledge of *Parliament*, not only for his *Servants*, but for his *Horses, &c.* or other *Goods* distrainable.

Id. 42.
Hakewell
62.

S

The

Scobel 88.

The Priviledge is due *eundo, morando, redeundo*, for the Persons of Members, and their necessary Servants, and in some Cases for their Goods and Estates also during that time.

Ibid.

For their own Persons, they have been priviledged from *Suits, Arrests, Imprisonments, Attendance on Trials, Serving on Juries*, and the like; yea from being summoned or call'd to attend upon any Suit in other Courts by *Sub-pœna* served on them.

Hakew. 62.
Vide Dyer
60.

He that doth Arrest any Member of either House, during the Session of Parliament, shall be imprison'd in the Tower, by the neither House of which he is, and shall be put to his Fine; and the Keeper also, if he will not deliver him when the Serjeant at Arms doth come for him by Command of the House.

Ibid.
Crompton's
Juris. 11.

The Servants tending upon their Masters during Parliament, who are necessary; and also such Officers
as

Priviledge of Parliament. 259

as attend the *Parliament*, as the *Serjeant at Arms*, the *Porter of the Door*, *Clerks*, and such like, and also their *Chattels* and *Goods* necessary, are priviledged; so that they shall not be taken, or arrested by any *Officer*, if it be not in case of *Treason* or *Felony*.

Generally the Priviledges of ^{4 Inst. 25.} *Parliament* do hold, unless it be in three Cases, viz. *Treason*, *Felony*, and the *Peace*.

No Priviledge is allowable in ^{2 Nalson} case of the *Peace*, nor in Case of ^{450.} Conviction, or disarming of Recusants.

No Minister of the *Parliament*, ^{St. 3 Ed. 4.} during forty days before, and forty ^{in Ireland.} days after the *Parliament* finish'd, shall be impleaded, vexed, or troubled by no means.

That every Minister, as well ^{Ibid.} *Lords Proctors* as *Commons*, be discharged and quitted of all manner of *Actions* had, or moved against them, or any of them, during the time aforesaid; and this to endure for ever.

Dyer 16.a.
pl. 19.

Apres que Members sont returns, leur personal Attendance est cy necessary al Parliament, que ils ne doivent pur ascun Busines. estre absents, & nul un Person poit estre bien mis, eo que il est un necessary Member: & pur ceo, si ascun morust devant le Parliament, un novel serra eslieu en son lieu, issint que l'entire Number ne doit failer: & donque il ensue, que le Person de chescun tiel Member doit estre privilege d'arrest al Suit d'ascun privat Person, durant cel temps que il est embusyd entour les Affairs del Roy, & son Realm: & tiel privilege ad estre tous foits grant per le Roy a les Commoners al Request del Prolocutor del Parliament le primer Jour, &c.

After that the Members are returned, their Attendance is so necessary to the *Parliament*, that they ought not for any Business to be absent, and no one Person can well be mist, so that he is a necessary Member: and therefore if any die before the *Parliament*, a new one shall

shall be chosen in his place, so that the entire Number may not fail: and then it follows, that the Person of every such Member ought to be priviledged from Arrest at the Suit of any private Person, during the time that he is busied in the Affairs of the King and the Realm: and such Priviledge has used to be granted at all times by the *King* to the *Commons*, at the Request of the *Speaker* of the *Parliament* the first Day, &c.

Common Reason voit, que intant que Ibid.
le Roy, & tout son Realm ad un Interest en le Corps de chescun de dits Members; il semble que le privat Commodity d'ascun particular home ne doit estre regard.

Common Reason will have it, that forasmuch as the *King* and his whole Realm have an Interest in the Body of every one of its Members, it seems that the private Commodity of any particular man ought not to be regarded.

Cest Court de Parliament est plus Ibid.
 — S 3 *haut Crompt. 7.b.*

haut Court, & ad plusors Priviledges que ascun autre Court del Realm ; par que semble que en chescun Case sans ascun Exception, chescun Burges est privilege, quant l'Arrest n'est forsque al Suit d'un Subject.

The Court of Parliament is the highest Court, and has more Priviledges than any Court of the Realm : for which it seems that in every Case without any Exception, every Burges is priviledged as to Arrest only at the Suit of the Subject.

Id. 61.

Coment que le Parliament erra en le grant del Brief de Privilege, encore ceo n'est reversible en autre Court.

Tho' the Parliament do err in the Grant of a Writ of Priviledge, yet it is not reversible in another Court.

Moor f. 57.
n. 163.

Fuit dit par Dyer, que si home soit condemme en Debt ou Trespass, & est esliu un des Burgeses ou Chivalers del Parliament, & puis soit prise

prise en Execution ; il ne poet aver
le privilege del Parliament : & is-
sint fuit tenus per les Sages del Ley
en le Case d'un Ferrers en temps le
Roy H. 8. & coment que le privi-
lege à ceo temps fuit à luy allowe,
ceo fuit minus just.

*Crompton's
Jur. p. 7, 8,
9, 10, 11.
34 H. 8.*

It was said by Dyer, That if a
Man be condemned in Debt or
Trespafs, and is cholen one of the
Burgesses or Knights of Parliament,
and atterwards is taken in Execu-
tion ; he cannot have the Privi-
ledge of Parliament : and so it was
held by the Sages of the Law in
the Case of one Ferrers in the time
of King Henry the Eighth, and tho'
the Priviledge at that time was al-
lowed him, yet it was unjust.

*Putys
Miscel.
Parl. p. 1.
&c.*

Hill & Stukely les Viscounts de
Londres fueront commit al Tower
pur lour Contemts ; pur ceo que ils
ne voil lesser George Ferrers, que
fuit arrest sur un Execution, d'aler
alarge, quant les Serjeants del Arms
vient pur luy, sans ascun Brief.

*Dyer 61.
Pl. 28.*

Hill and Stukely, the Sheriffs of

London, were committed to the Tower for their Contempts, for that they would not suffer George Ferrers, who was Arrested upon an Execution, to go at large, when the Serjeant at Arms came for him, without any Writ.

Fitzherberts Case.

Moor fo.

340. n. 461.

Le lower Meson del Parliament agree, que entant que un fuit arrest, devant que il fuit eslie Burgeß, que il ne doit aver le privilege del Meson.

The lower House of Parliament agreed, that in regard one was arrested, before he was chosen Burgeß, that he ought not to have the Priviledge of the House.

Vide Fitz-Geralds Case, Anno 1640. in Ireland. Vide 39 Hen. 6. Walter Clerks Case, 5 Hen. 4. Richard Chidder 38 Hen. 8. Tyneman's Case, 43 Eliz. Belgrave's Case, 39 Hen. 6. Ferrer's Case in Holinshead, f. 1584.

Brownl. 91.

Jackson
versus
Kirton.

Debt upon an Obligation, where- of the Condition was, *That if A. would render himself to an Arrest*
in

in such a place, &c. *A.* pleads privilege of *Parliament*, and that being Servant to such a Member, he could not render himself to be arrested. Upon Demurrer, the Opinion of the Court was for the Plaintiff; for *A.* might render himself, and let it be at their Peril, if they will arrest him.

ibid

Magister Militiæ Templi petit, quòd distringat Catalla unius de Concilio, tempore Parliamenti, pro Reditu unius Domûs in London. Rex respondet, non videtur honestum, quòd illi de Concilio suo distringantur Tempore Parliamenti; sed alio Tempore, &c.

ibid

ibid

ibid

ibid

ibid

ibid

ibid

ibid

ibid

ibid

Bogo de Clare, and the Prior of *Trinity*, for serving a Citation on the Earl of *Cornwal* in the Time of the *Parliament*, committed to the *Tower*, and *Bogo*, at whose Procurement it was done, fined in 2000 Marks to the King, and a thousand pounds to be paid to the Earl.

ibid

Townsh. Coll.

255.

Sir Simon

d'Ewes

Jour. 645.

Col. 1 says

he was fi-

ned 20000

Marks.

And yet the serving of the said Citation did not arrest or restrain his

4 Inst. 24.

Body:

Body : and the same Priviledge holdeth in Case of *Subpœna*, or other Proceſs out of any Court of Equity.

Ibid.

Rex mandavit Juſticiariis ſuis ad Aſſiſas, &c. quod ſuperſedeant captioni eorandem, abſi Comites, Barones, & alii Summoniti ad Parliamentum Regis ſunt Partes, quamdiu dictum Parliamentum duraverit.

Ibid.

Vid. Sir S.
d'Ewes

Jour. 435.
Col. 1.

Ibid.

A Citation ſhall not be ſerved on any Member, nor *Subpœna*.

Divers Perſons committed to Priſon for ſerving a Citation on *John de Thorsby*, Clerk of the Parliament.

Scobel 110

Vid. Sir S.

d'Ewes

Journ. 249

Col. 2.

22 Febr. 6 Ed. 6. Order'd, If any Burgeſſ require Priviledge for himſelf, or his Servant; upon Declaration thereof to the Speaker, he ſhall have a Warrant ſign'd by the Speaker to obtain the Writ.

Scobel 110

22 Martij 18 Jac. 1. It was reſolved, That no Protection under any Mans hand of this Houſe, is good.

Id. 89.

29 Jan. 1557. 4 & 5 Ph. & Mar. Thomas Ennys Burgeſſ for the Borough

rough of Thusk, complained that a *Subpæna* was deliver'd him to appear in *Chancery*, and required the Priviledge of the House: whereupon Sir *Clement Higham* and Mr. Recorder of *London*, were sent to the *Lord Chancellor*, to revoke the *Process*.

27 *Eliz.* One *Kyrl* having caus'd a *Subpæna* out of the *Star-Chamber* to be served on a Member of the *House of Commons*; and for want of Appearance, taken out an Attachment, and inforced the Payment of Money to discharge the same: the said *Kyrl* was committed, till he had paid Costs to the Party served, and made a Submission to the House on his Knees at the Bar.

Id. 90.
Vid. *Townsh.*
Coll. 213.
Sir *Simon*
d'Ewes
Jour. 438.
Col. 1, 2.

15 *May* 1604. The *Serjeant* was sent to Attach the Body of one, who served a *Subpæna* on the Person of Sir *Robert Needham* a Member.

Scobel 90.

7 *May* 1607. The *Serjeant* was sent for *Edward Throgmorton*, for serving

serving

serving a *Subpæna* on Sir Oliver Cromwel.

Id. 91.

14 Maij 19 Jac. I. Upon Complaint of the Service of a *Subpæna* on a Member of this House, Sir Edward Coke vouched a Precedent, 10 Ed. 3. That a *Subpæna* being served on the Clerk of this House, the Party was committed for breaking the Priviledge of this House.

Ibid.

4 Maij 1607. A *Subpæna* out of the Exchequer being served on Sir R. Pawlet a Member; the House granted Priviledge, and order'd the Serjeant by his Mace, to attach the Parties delinquent, and to bring them to the Bar, to receive the Judgment of the House. And the next day Mr. Speaker writ a Letter to the Lord Chief Baron, That no further Proceſs do issue against the ſaid Sir R. Pawlet.

Ibid.

3 Dec. 19 Jac. I. Upon Occaſion of a *Subpæna* ſerved on Mr. Brereton, it was agreed by the whole Houſe, That the ſerving of

a Subpœna upon a Member of this House, knowing him to be a Parliament-man, is a breach of Priviledge: and Napper, who served the Subpœna, was committed.

39 Eliz. Mr. Combs and Mr. Towns. Coll. Henry Powle, Members of this House, being served with a Subpœna ad testificandum, by Mrs. Ann Wye; the Serjeant of the House was order'd to bring in the said Ann to appear in this House, to answer the Contempt.

43 Eliz. 1601. A Subpœna ad testificandum served on Mr. Johnson, and other Members; Agreed, That the Serjeant be sent to arrest all those to appear that had procured the Subpœna, to answer their Contempt with all speed.

44 Eliz. 1601. Sir Edmond Morgan a Member of this House was served with a Subpœna, at the Suit of one Lemney; who was sent for by the Serjeant. And because Christopher Kennel, who served it, professed Ignorance, he was only ad-

adjudged to three days Imprisonment in the Custody of the *Serjeant*, and pay his Fees.

Ibid.

Vid. Sir S. d'Ewes

Jour. 656. Col. 1, 2.

The same Order with *William Mackerless*, who served a *Subpœna* on Mr. *Pemberton* a Member, at the Suit of one *Mackerless*.

Sir Simon d'Ewes

Jour. 655. Col. 1, 2.

44 *Eliz.* 1601. Mr. *Philips* a Member of the House was served with a Privy Seal out of the Court of *Wards*, by one *Thomas Dean* Servant to Mrs. *Chamberlain* a Widow. The House ordered that she, and her Servant, shou'd be sent for by the *Serjeant*.

Vide plus de his Sir Simon d'Ewes Journal 637. & alibi passim.

Scobel 92.

33 *Eliz.* The Sheriffs of *London* were fined by the *Commons*, and sent to the *Tower*, for not delivering a *Burgeß* arrested for Debt, sitting the *Parliament*.

Id. 92.

Vide Sir S. d'Ewes

Journ. 519.

6 *Apr.* 1593. The *Serjeant at Mace*, who arrested Mr. *Neal* a Member upon an Execution; and *Weblyn*, at whose Suit he was arrested, were brought to the Bar, and both

com-

committed Prisoners to the *Tower*: and the *Serjeant at Arms* attending this House was order'd to deliver them over to the *Lieutenant of the Tower*.

13 Maij 1607. *Nicholas Allen* ^{Ibid.} an Attorney, and *Palmer*, at whose Suit Mr. *Martin* a Member was Out-law'd, order'd to be sent for by the *Serjeant*, and brought to the Bar to answer their Contempt.

An Attachment for Contempt ^{Ibid.} being taken out of *Chancery* against Mr. *Belingham* a Member: the House order'd to have Priviledge, and a Letter to be sent to Mr. *Evelyn*, one of the six Clerks, to stay the Suit.

Upon a *Writ* directed to the ^{Id. 93.} *Sheriff* to levy Twenty pounds Issues upon Sir *Robert Oxenbridge* for Non-appearance, it was order'd, That if the Issues were not discharged before that night, the Parties delinquent to be brought next Day to the Bar by the *Serjeant*.

14 Maij 1576. Sir *Edward Mon-* ^{Ibid.}
tagne

tague a Member of the House, was warned to attend a Trial in *London*, which was to be had against him; and was by Order of the House priviledged: and the Party that gave the Warning was summon'd to appear at the Bar next Morning.

Id. 94.
Vide Sir
S. d'Ewes
Jour. 436.
Col. 1, 2.

21 Febr. 1588. Order'd, *That those Members of the House who have Occasion of Priviledge (Writs of Nisi prius being brought against them) do declare their Case to the Speaker, who thereupon shall direct the Warrant of this House to the Lord Chancellor, for awarding Writs of Superfedeas.*

Ibid.

3 Martij 18 Jac. 1. Upon a Report from the Committee (appointed to consider of a way of staying Trials against Members of the House) that by several Precedents the Custom appear'd to be in such Cases, *That on Motions and Orders in the House, Letters were written to the Justices of Assize for stay of Trials against Members of the House, which Letters were enter'd in*

Priviledge of Parliament. 273

in the *Journal-Book*, and that it belongeth to the Clerk to write the same. It was thereupon Resolved, That the former Course of writing Letters to the Justices of Assize, shou'd be held according to former Precedents.

10 Junij 1607. Sir Robert Johnson a Member of this House, mov'd Id. 95. for a Letter to stay a Trial against him in the *Exchequer*; which was granted (as appeareth by the Entry on the 13th day, when a Petition of Sir Robert Brett was read against that Priviledge.) The Priviledge formerly granted was affirmed, upon this Reason, *That no man shou'd have any Thing to withdraw him from his Service in the House.* The like 14 Febr. 18 Jac. 1.

The Priviledge of the House is Ibid. so much insisted on, that it hath been a Question, *Whether any Member of the House could consent, that himself might be sued, during the Session; because the Priviledge is not so much the Persons, as the Houses:*

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ses : and therefore when any Person hath been brought to the Bar for any Offence of this Nature, the *Speaker* hath usually charged the Person in the Name of the whole House, as a Breach of the Priviledge of the House.

Ibid.

3 Junij 1607. Sir *Thomas Holcroft* a Member of the House, had occasion to sue at Law, and was sued, with which he was content, and desired the Leave of the House: there was a Question, *Whether the House shou'd give leave for a Breach of Priviledge* : and it was resolved, *The House might give leave.*

Id. 96.

7 Maij 1607. Sir *Thomas Bigg* and Sir *Thomas Love* being return'd upon an Attaint in the *Kings Bench*, it being moved, that in this Case they ought to have Priviledge: it was so order'd, and the *Serjeant* sent with his *Mace*, to deliver the Pleasure of the House to the *Secondary*, the Court sitting.

22 Nov. 1597. Sir *John Tracy*

Priviledge of Parliament. 275

a Member of this House, being at the *Common Pleas* Bar, to be put upon a Jury; the *Serjeant at Arms* was presently sent with his *Mace* to fetch him thence, to attend his Service in the House.

Ibid.
Vide Sir
S. d' Ewes
Journ. 560.
Col. 2.

Apr. 12 Jac. I. Sir William Scobel 96.
Bampffield was committed by the *Lord Chancellor* for a Contempt, after the Writ of Summons, but before the Election. Order'd upon the Question, *That he shall have his Priviledge by Writ of Habeas Corpus.*

I Jac. I. Sess. 2. Sir John Peyton
return'd *Knight* for *Cambridge* the last Session, and since chosen *Sheriff*; Resolved, *That he shall attend his Service here.*

Ibid.

28 Martij 1542. During this Session of Parliament some wrong was offer'd to their ancient Priviledges, a *Burges* of theirs being Arrested: whereof the *King* understanding, not only gave way to their releasing him, but Punishment of the Offenders: insomuch

Herbert's
Hen. 8. 539

T 2 that

276 Priviledge of Parliament.

that the *Sheriffs* of *London* were committed to the *Tower*, and one Delinquent to a place call'd *Little Ease*, and others to *Newgate*.

Scobel 112,

113.

Vide Moor from the *Committee of Priviledges*,

fo. 340.

n. 461.

Fitzherbert's Case.

Vide Sir

S. d'Ewes

Jour. 479,

480, 490.

Col. 2.

2 *Martij* 1592. Upon a Report That one *Mr. Fitzherbert* was return'd a *Burgesß*, and accepted against, because he was alledged to be Outlaw'd, and detain'd upon such Outlawry: The House order'd, That *Mr. Speaker* shou'd move the Lord Keeper for an *Habeas Corpus cum Causâ*, to bring up the Body and the Cause of *Mr. Fitzherbert*. But the Lord Keeper return'd, That in regard of the ancient *Liberties and Priviledges* of this House, the *Serjeant at Arms* be sent by Order of this House for *Mr. Fitzherbert* at his own charge; by reason whereof he may be brought, without peril of being further arrested by the way: which was approved of.

Scobel 104,

105, 106,

107.

1 *Jac.* 1. The first day of sitting, complaint was made, That
Sir

Priviledge of Parliament. 277

Sir Thomas Shirley chosen a Member of the House, was arrested four days before the sitting of this Parliament: a Warrant issued to the Clerk of the Crown for a Habeas Corpus to bring him to the House, being then a Prisoner in the Fleet; and the Serjeant and his Teoman were sent for in Custody, who being brought to the Bar, and confessing their Fault, were remitted for that time. 17 April, Upon hearing Council in the House at the Bar for Sir Thomas Shirley, and the Warden of the Fleet; it was order'd, That Simson, at whose Suit, and the Serjeant by whom the Arrest was made, shou'd be committed to the Tower. 4 Maij, A Habeas Corpus was awarded to the Warden of the Fleet to bring Sir Thomas Shirley to the House; the Warden deny'd to execute it; for which the 7th of May following, he was sent for by the Serjeant, and brought to the Bar; who denying to bring his Prisoner, a new

Vid. Petty's
Miscell.
Parl. 122,
123, 124,
125.

Writ of Habeas Corpus was awarded, and the Warden was committed to the *Serjeant*, with this Order, *That if that Writ were not executed, that then he should be deliver'd over to the Lieutenant of the Tower, as the Houses Prisoner.* 8 *Maij*, The *Serjeant* was sent with his Mace to the *Fleet*; the House sitting, to require the Body of Sir *Thomas Shirley*: but the *Serjeant* being deny'd, a Warrant was made to the *Serjeant* to deliver the Warden of the *Fleet* to the Lieutenant of the *Tower*, to be kept close Prisoner. 11 *Maij*, The Warden was again sent for, and brought to the Bar, and refusing to deliver up his Prisoner; he was committed to the Place call'd the *Dungeon* or *Little Ease* in the *Tower*. 14 *Maij*, A new Warrant was order'd for a new *Writ of Habeas Corpus*, and that the *Serjeant* shou'd go with the *Writ*; that the *Warrant* shou'd be brought to the Door of the *Fleet* by the Lieu-

Lieutenant himself, and there the *Writ* to be deliver'd to him, and the Commandment of the House to be made known to him by the *Serjeant*, for the executing of it ; that in the mean time the Warden to be presently committed to the *Dungeon*, and after to be return'd thither again. 18 *Maij*, The Warden did deliver Sir *Thomas Shirley*, and so was not put into the *Dungeon*. 19 *Maij*, He attending at the Door, was brought in to the Bar, where, upon his knees, confessing his Error and Presumption, and professing he was unfeignedly sorry, he had so offended this Honourable House ; upon that Submission, by direction of the House, the *Speaker* pronounced his Pardon and Discharge, paying ordinary Fees to the *Clerk*, and to the *Serjeant*.

Mr. *Belgrave*, being a Member Sir *Simon* of the *House of Commons*, had an ^{a'Ewes} Information exhibited against him ^{Four. 688.} Col. 1. in the *Star-chamber* by the *Earl of*

Huntington. An Order was enter'd, as the Act of the House.

43 *Eliz.* 1601. *That he ought not to be molested in that Manner.*

Rushb. coll.

653.

Vid. Petyts

Miscell.

Parl. p. 107

10 *Febr.* 4. *Car.* 1. Whilest the House was in Debate, the Warehouse of Mr. *Rolls* (Merchant, and Member of the House then sitting in *Parliament*) was lock'd up by a *Pursuivant*, and himself call'd from the *Committee*, and served with a *Subpœna*: This gave occasion of smart Debates in the House.

Id. 654.

After, the *Attorney General* writ a Letter, *That the serving a Subpœna was a mistake, and pray'd a favourable Interpretation.* Resolved, *That Mr. Rolls a Member of the House, ought to have Priviledge of Person and Goods.*

Rushb. Coll.

659.

Memorials

of the Me-

thod of

Proceed-

ings in Par-

liament 97.

Vid. Sir S.

d'Ewes

Journ 85.

Col. 1.

16 *Febr.* 5. *Eliz.* Robert Parker Servant to Sir William Woodhouse Knight for Norfolk, being attached in London, at the Suit of one Baker, in *Trespas*; had a Warrant of Priviledge, notwithstanding Judgment given against him for four Marks.

20 *Febr.*

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20 Febr. 18. Eliz. 1575. Upon the Question, and also upon Division of the House, *Edward Smaley* Servant to *Arthur Hall* Esq; one of the *Burgesses* for *Grantham*, being arrested upon an Execution, had Priviledge.

Ibid.
Vide Sir
S. d'Ewes
Journ. 251.
Col. 1.

16 Dec. 44 Eliz. *Anthony Curwen* Servant to *William Huddleston* Esq; one of the *Knights* of *Cumberland*, being arrested upon a *Capias ad Satisfaciendum* out of the *Common Pleas*, for six pounds Debt, and forty shillings Damages, and detain'd in Execution; a *Supersedeas* was awarded, and he was deliver'd.

Ibid.
Vid. Sir S.
d'Ewes
Journ. 680.
Col. 1.

And the House awarded, the *Serjeant* shou'd be discharged, paying his Fees, and that *Matthews* shou'd pay them: and *Matthews* to pay his Fees, and remain three days in the *Serjeants* Custody, for procuring the Arrest.

Townsh. Coll.
326.
Vide Sir
S. d'Ewes
Journ. 680.
Col. 1. 686.
Col. 1.

11 Maij 19 Jac. 1. The *Under-Sheriff* of *Middlesex* was call'd to the Bar, for causing *Alexander Melling*, Servant to the *Chancellor* of

Memorials,
&c. p. 98.

of the *Dutchy* to be arrested ; he deny'd he knew him to to be his Servant : Mr. *Speaker* let him know, the House had order'd him to have Priviledge ; and therefore ordereth the *Under-Sheriff* to discharge him.

Ibid.

1 *Jac.* 1. *Sess.* 2. Sir *Edward Sandys* moveth a Breach of Priviledge by Sir *Robert Leigh* a Justice of the Peace, for committing his Coach-man to *Newgate*. Sir *Robert Leigh* was sent for by the *Serjeant*, and an *Habeas Corpus* for the Prisoner. Sir *Robert Leigh* being brought to the Bar, acknowledg'd his Fault, and was discharged, and so, was the Prisoner.

Ibid.

3 *Martij* 1606. *Valentine Syre* Servant and Bag-bearer to the Clerk of the *Commons House*, being arrested upon an Execution, was by Order and Judgment of the House enlarged.

Id 99.

Vid. Towns.

Coil 196,

206, 210.

7 *Sept.* 1601. *Woodal* Servant of *William Cook Esq;* a Member of the House being arrested, and in Pri-

Prison in *Newgate* : the *Serjeant* Vide Sir S. d'Ewes Jour. 629. Col. 1.
at Arms was presently sent to *Newgate* to bring him to the House, *se-*
dente Curia : and being brought to
 the Bar with his Keeper, was dis-
 charged by Order of the House
 from his said Keeper, and from his
 Imprisonment.

1 Julij 1607. *John Pasmore* the *Memorials*,
Marshal's man being sent for, and ^{99.}
 brought to the Bar, for arresting
John Jessop Waterman, Servant to
Sir Henry Nevil a Member of the
 House ; he deny'd that he knew
 he was *Sir Henry's* Servant, until
 afterward ; notwithstanding he
 took an *Assumpfit* from him to an-
 swer the Action. The House
 thought fit to commit him to the
Serjeant, till the Houses Pleasure
 were further known, and till he had
 discharged the *Assumpfit*, and paid
 the Fees.

17 Junij 1609. Upon a Report *ibid.*
 from the *Committee for Priviledges*,
 that a menial Servant of *Sir Robert*
Wroth was arrested eight days be-
 fore

fore this Session ; the *Serjeant* was sent for the Prisoner, and the *Serjeant* that made the Arrest, one *King*, who follow'd it, and *Fisher*, at whose Suit he was arrested.

Id. 100.

4 Junij 19 Jac. I. *Johnson*, a Servant to Sir *James Whitlock*, a Member of the *Commons House*, was arrested upon an Execution by *Moor* and *Lock* : who being told that Sir *James Whitlock* was a *Parliament man* ; *Fulk*, one of the Prosecutors said, *He had known greater mens men than Sir James Whitlock taken from their Masters Heels in Parliament time.* This appearing, *Lock* and *Moor* were call'd in to the Bar, and by the Judgment of the House were sentenced. First, *That at the Bar they shou'd ask Forgiveness of the House, and of Sir James Whitlock, on their knees.* Secondly, *That they shou'd both ride upon one Horse bare-back'd, back to back, from Westminster to the Exchange, with Papers on their Breasts, and this*

Pety's Mis-
cel. Parlia-
ment. 118.

Priviledge of Parliament. 285

this Inscription, For arresting a Servant of a Member of the *Commons House of Parliament*; and *this to be presently done* sedente Curia: which *Judgment* was pronounced by Mr. *Speaker* against them at the Bar upon their Knees.

28 Apr. 22 Jac. 1. A Warrant ^{Memorials,} was order'd to be issued by the ^{100.} Speaker for a Writ of Priviledge, to bring up Andrew Bates Servant to Mr. Richard Godfrey of the House, in Execution with the Sheriff of Kent, at the Suit of one Hunt.

This Priviledge doth take place by Force of the *Election*, and that before the *Return* be made, as appears in the Case following.

19 Nov. 1601. Upon Informa- ^{Id. 107,} tion to the House, that one Roger ^{108.} Boston Servant to ——— Lanckton, ^{Vide Sir} Baron of Walton, who (upon cre- ^{S. d'Ewes} dible Report of divers Members of ^{Four. 642.} the House, was affirmed to be cho- ^{Col. 2.} sen a Burgeß for the Borough of ^{643. Col. 1.} Newton in Lancashire, but not yet ^{Vid. Peryts} return'd by the Clerk of the Crown) ^{Miscell.} had ^{Parl. 119.}

had been, during that *Session of Parliament*, arrested in *London*, at the Suit of one *Muscle*: the said *Muscle*, together with the Officer that made the Arrest, were sent for by the *Serjeant*, and brought to the Bar, and there charged by Mr. *Speaker*, in the Name of the whole House, with their Offence herein: and having been heard, *Boston* was order'd to have *Priviledge*, and to be discharged of his Arrest and Imprisonment; and the Offenders for three days committed to the *Serjeant*, and order'd to pay such Charges to *Boston* as the *Speaker* shall set down, and their Fees.

Memorials,
p. 108, 109.
Sir Simon
d'Ewes
Jour. 410.
Col. 1. 414.
Col. 2.

6 *Martij* 1586. This day *William White*, brought to the Bar for arresting Mr. *Martin* a Member of the House, made Answer, *That the Arrest was made above fourteen days before the beginning of the Parliament*: the House thereupon appointed a *Committee* to search the *Precedents*. And *March* 11. the *Committee* made their report of Mr. *Martin*

Martin a Member of this House, arrested upon mean Process by *White* above twenty days before the beginning of this *Parliament* holden by *Prorogation* (mistaken for *Adjournment*) and in respect that the House was divided about it in Opinion, *Mr. Speaker* with the consent of the House, the sooner to grow to some certainty of the Judgment of the House in this Cause, moved these Questions to the House, *viz.*

First, *Whether they would limit a time certain, or a reasonable time, to any Member of the House for his Priviledge.* The House answered a *convenient time.*

Secondly, *Whether Mr. Martin was arrested within this reasonable time.* The House answered *Yea.*

Thirdly, *If White should be punished for arresting Martin.* The House answer'd *No*; because the arrest was twenty days before the beginning of the *Parliament*, and unknown to him that would be taken

ken for reasonable time. But the principal cause why *Martin* had his Priviledge, was, for that *White* the last *Session* (mistaken for *Meeting*) of *Parliament* arrested *Mr. Martin*, and then knowing him to return'd a *Burgeß* for this House, discharg'd his Arrest.

And then afterwards *Mr. Martin* again returning out of his Country to *London* to serve in this House, *Mr. White* did again arrest him, and therefore this House took in evil part against him his second Arrest, and thereupon judg'd that *Martin* should be discharged of his second Arrest out of the *Fleet* by the said *Mr. White*.

Id. 102.

12 *Martin* 1606 Complaint was made by *Mr. James* a *Burgeß* of *Parliament*, That his Horse standing at his Inn was taken by the Post-masters Servant: both the Post-master and his Servant were sent for, and brought to the Bar. *Moreton* the Post-master appearing to be ignorant of what his Servant had done,

done, and disavowing it, was by order of the House discharged: but upon the Testimony of a Witness at the Bar, that he told the Servant, when he took the Horse, that a Member of *Parliament* was owner of it, the Servant was committed.

In Dec. 1606. *Thomas Finch*, a *Memorials*
Servant to Sir *Nicholas Sandys* one p. 101, 102
of the *Burgesses* for *Quinborough*,
was Arrested during the *Adjournment*;
which being conceived to be a great Contempt to the *Priviledge* of the House, an *Habeas Corpus* was awarded to bring him to the House, and he was accordingly brought, and also one *Knight*, who procured the Arrest, and *Harrison* the Yeoman. The Excuse was, that *Finch* was an *Attorney at Law*: but it being avow'd by Sir *Nicholas Sandys*, That *Finch* lay in his House, solicited his Causes, and received Wages from him. And it being insisted on, that all menial and necessary Servants are to be *priviledged*, and instance given of a Precedent

V •

cedent of the *Baron of Waltons* Solicitor, and *Huddleston's* Solicitor in the time of Queen *Elizabeth*. Upon the Question, *Finch* was priviledged, and deliver'd, according to former Precedents.

Ibid. 102.

During the *Adjournment*, a Suit was prosecuted in the Court of *Wards* against *Nicholas Pots Esq;* and *Francis Wethered Gent.* Committees of a *Ward* which concerned Mr. *Nicholas Davys*, Servant to the then *Speaker*, as *Assignee* of the *Ward*. The *Speaker* writ a Letter to the Court, to make known, That he was one of his Clerks, and nearest Servants; and that the Priviledge was now as warrantable as in the Time of sitting, and pray'd the Court to take Notice of it.

Id 103.

During another *Adjournment* in *March* following, the *Speaker* (warranted by the general Order) at the desire of Sir *Edmund Ludlow*, who was summon'd to attend the Execution of a Commission out of the *Chancery*, writ a Letter to the Commissioners

missioners to excuse his Attendance, and that he shou'd not be prejudiced by his Absence.

In May 1607. during an *Adjournment*, the *Speaker* directed a Letter to the *Lord President* and *Council* at *York*, to stay Proceedings in a Suit against *Talbot Bowes*, a Member of the House. Ibid.

29 Febr. 1575. One *Williams*, Id. 113. for assaulting a *Burges* of this House, was upon Complaint sent for by the *Serjeant*, and brought to the Bar, and committed to the *Serjeant's Ward*.

23 Apr. 1 Mar. One *Monington*, Ibid. for striking *William Johnson* a *Burges*, was sent for, and confessing it, was committed to the *Tower*.

28 Nov. 1601. Complaint being Ibid. made by Mr. *Fleetwood* a Member Townsh. Coll. 259. of the House, That one *Holland* a Vide Sir *Scrivener*, and one *Brook* his *Servant*, had evil intreated and beaten S. d'Erwes Jour. 658. Col. 1. the *Servant* of the said Mr. *Fleetwood* in his Presence; they were both sent for by the *Serjeant*, and brought

brought to the Bar; and for the said Offence committed for five days to the *Serjeant*. And that they should pay double Fees.

Memorials,
114.

12 Febr. 18 Jac. 1. Mr. *Lovel*, a Member of the House, inform'd, *That one Darryel threatned his Person, that for a Speech spoken by him in the House, he shou'd be sent to the Tower during the Parliament, or presently after.* Darryel was sent for by the *Serjeant* to answer it to the House; and upon Testimony of it, he was committed to the *Serjeant* till *Thursday* following, and then to acknowledge his Fault, or be committed to the *Tower*.

Ibid.

16 Jun. 1604. Complaint being made of one *Thomas Rogers* a Currier, dwelling in *Coleman-street*, for abusing Sir *John Savill* in slanderous and unseemly terms, upon his Proceedings at a *Committee* in the *Bill* touching *Tanners, &c.* he was sent for by the *Serjeant at Arms* to the Bar, to answer his Offence.

I Car. I.

Priviledge of Parliament. 293

1 Car. 1. The *Sheriff* for the 4 Inst. 48.
County of *Buckingham* was chosen
Knight for the County of *Norfolk*,
and return'd into the *Chancery*; and
having a *Subpœna* served upon him
at the Suit of the Lady *C. pendente*
Parliamento, upon Motion, he had
the *Priviledge* of *Parliament* al-
low'd to him by the *Judgment* of
the whole *House of Commons*.

43 Eliz. 1601. This day a *Page* Townsh. Coll.
was brought to the Bar, whom Sir ^{195.}
Francis Hastings had caused to be Vide Sir S.
committed, for that as he went d'Ewes
down the Stairs, the *Page* offer'd Journ. 629.
to throng him. But upon Sir *Francis*
Hastings his Intreaty, speaking
very earnestly for him, and upon the
Pages submission upon his knees at
the Bar, he was discharged. Col. 1.

44 Eliz. 1601. Mr *William Morris* Townsh. Coll.
Burgess for *Beaumaris*, coming on ^{229.}
his way to *London*, his Man was ar- Vid. Sir S.
rested at *Shrewsbury*. Order'd, That d'Ewes
the Bayliff, and he that procured Journ. 643.
the Arrest, and the *Serjeant* be sent Col. 2.
for.

Townsh. Coll.
225, 226.

44 Eliz. 1601. The Solicitor of one *Langton* a *Burges* for *Newton* in *Lancashire* was arrested at the Suit of one *Musket* a *Taylor*, and committed to the *Compter*. Agreed by the House, *That both Musket and the Serjeant shou'd pay the Solicitor's Costs and Damages, and be imprison'd three days in the Serjeant's Custody, and to pay the Serjeant attending this House his Fees.*

Rush. Coll.
663.

The Parliament shall not give Priviledge to any *contra morem Parliamentarium*, to exceed the bounds and limits of his Place and Duty. And all agreed, *That regularly he cannot be compelled out of Parliament to answer things done in Parliament in a Parliamentary Course: but it is otherwise where things are done exorbitantly, for those are not the Acts of the Court.*

Id. 2d Part
of the 2d
Vol. 1147.

16 Car. 1. Resolved, *That the Lords voting the propounding and declaring matter of Supply, before it was moved in the House of Commons, was a Breach of Priviledge of the House.* No

Priviledge of Parliament. 295

No *Priviledge* is allowable in ^{2 Nalson} 450.
Case of the Peace betwixt private
men, much more in Case of the
Peace of the Kingdom.

Priviledge cannot be pleaded a- ^{Ibid.}
gainst an *Indictment* for any thing
done out of *Parliament*, because all
Indictments are *contra Pacem Do-*
mini Regis.

Priviledge of Parliament is grant- ^{Ibid.}
ed in regard of the Service of the
Commonwealth, and is not to be u-
sed to the danger of the *Common-*
wealth.

All *Priviledge of Parliament* is ^{Ibid.}
in the *Power of Parliament*, and is
a Restraint to the Proceedings of
other inferiour Courts, but is no
Restraint to the Proceedings of
Parliament.

Dec. 1641. Resolved, *That the set-* ^{2 Nalson,}
ting of any Guards about this House, ^{729.}
without the Consent of the House, is
a Breach of the Priviledge of this
House, and that therefore such
Guards ought to be dismissed.

Resolved upon the Question, *ye-* ^{Id. 741.}

Ibid.

mine contradicente, That the Priviledges of Parliament were broken by his Majesties taking Notice of the Bill for suppressing of Souldiers, being in agitation in both Houses, and not agreed on. Resolved upon the

Ibid.

Question, Nemine Contradicente, That his Majesty, in propounding a Limitation and provisional Clause to be added to the Bill, before it was presented to him by the Consent of both Houses, was a Breach of the Priviledge of Parliament. Resolved upon the Question, Nemine Contradicente, That his Majesty expressing his Displeasure against some Persons, for Matters moved in the Parliament, during the Debate, and preparation of that Bill, was a Breach of the Priviledge of Parliament.

2 Nalson
823.

Whereas his Majesty in his Royal Person the 4th of Jan. 1641. did come to the *House of Commons*, with a great Multitude of Men, armed in a warlike manner, with Halberds, Swords, and Pistols, who
came

came up to the very door of the House, and placed themselves there, and in other Places and Passages near to the House, to the great Terror and Disturbance of the Members then thereof sitting, and according to their Duty, in a peaceable and orderly manner, treating of the great Affairs of both Kingdoms of *England* and *Ireland*; and his Majesty having placed himself in the *Speaker's* Chair, did demand the Persons of divers Members of that House to be delivered unto him.

It was thereupon declared by *ibid.* the *House of Commons*, That the same is a high Breach of the Rights and Priviledges of *Parliament*, and inconsistent with the Liberty and Freedom thereof; and therefore the House doth conceive, they could not with safety of their own Persons, or the Indempnities of the Rights and Priviledges of *Parliament*, sit there any longer, without a full Vindication of so high a Breach

Breach of Priviledge, and a sufficient Guard wherein they might confide.

*Selden's
Jud. p. 84.*

The Lords cannot proceed against a Commoner, but upon a Complaint of the Commons.

APPEN.

APPENDIX.

The Report of a Case happening in Parliament in the first year of K. James the First, which was the Case of Sir Francis Goodwyn, and Sir John Fortescue, for the Knights Place in Parliament for the County of Bucks.

Translated out of the French.

IN this Case, after that Sir Francis Goodwyn was elected *Knight*, with one Sir William Fleetwood, for the said County, which *Election* was freely made for him in the County, and Sir John Fortescue refused, notwithstanding that the Gentlemen of the best Rank put him up; The said Sir John Fortescue complained to the King and Council Table, (he being one of them,

to

to wit, one of the *Privy Council*) that he had been injuriously dealt with in that *Election*, which does not appear to be true: But to exclude Sir *Francis Goodwyn* from being one of the *Parliament*, it was objected against him that he was *Outlawed* in *Debt*, which was true; *scilicet*, He was *Outlawed* for 60 *l.* 31th of *Queen Elizabeth*, at the Suit of one *Johnson*; which Debt was paid: and also the 39th of *Eliz.* at the Suit of one *Hacker* for 16 *l.* which Debt was also paid; and that notwithstanding, the *King* by the *Advice* of his *Council* at *Law*, and by the *Advice* of his *Judges* took *Cognisance* of these *Outlawries*, and directed another *Writ* to the *Sheriff* of the said *County* to elect another *Knight* in the place of the said Sir *Francis Goodwyn*, which *Writ* bore Date before the *Return* of the former.

And this *Writ* recites, That because the said Sir *Francis* was *Outlawed*, prout *Dominus Regi constabat de Recordo*, and for other good *Considerations* which were well cognisant to the *King*, and because he was *Indonious* for the *Business* of the *Parliament*, therefore the *King* commanded him to elect

one

one other *Knight* in his room, which *Writ* was executed accordingly, and Sir *John Fortescue* elected.

And at the day, to wit, the *first* day of the *Parliament* both *Writs* were return'd, the *first* with the Indenture sealed, between the *Sheriff* and the *Freeholders* of *Bucks*, in which Sir *Francis Goodwyn* and Sir *William Fleetwood* were elected *Knights* for the *Parliament*; and also the *Sheriff* returned (upon the *Dorse* of the *Writ*) that the said Sir *Francis* was *Outlawed* in two several *Outlawries*, and therefore was not a *meet Person* to be a Member of the *Parliament House*: The *second Writ* was returned with an Indenture only, in which it was recited, That Sir *John Fortescue*, by reason of the second *Writ*, was elected *Knight*.

Both these *Returns* were brought the third sitting of the *Parliament* to the *Parliament House* by Sir *George Copping*, being *Clerk* of the *Crown*.

And after that the *Writs* and *Returns* of them were read, it was debated in *Parliament*, Whether Sir *Francis Goodwyn* should be received as *Knight* for the *Parliament*, or Sir *John Fortescue*. And

And the Court of Parliament, after a long Debate thereupon, gave Judgment That Sir Francis Goodwyn should be received; and their Reasons were these:

First, Because they took the Law to be, that an Outlawry in Personal Actions was no Cause to Disable any Person from being a Member of Parliament: and it was said, That this was Ruled in Parliament 35th of Queen Elizabeth in the Parliament House in a Case for one Fitz-Herbert.

Another President was 39 H. 6.

Secondly, The Pardons of the 39th of Queen Eliz. and 43 Eliz. had pardoned those Outlawries: and therefore, as they said, he was a Man able against all the World, but against the Party Creditor, and against him he was not. But in this Case the Parties were paid.

Also *Thirdly*, It was said, that Sir Francis Goodwyn was not Outlawed, because no Proclamation was issued forth to the County of Bucks, where he was Commorant and Resiant: And therefore the Outlawry being in the Hustings in London, and Sir Francis Goodwyn being Commorant

in *Bucks*, the *Outlawry* (no Proclamation issuing to the County of *Buks*) was void by the *Statute* of the 31th of the *Queen*, which in such Cases makes the *Outlawries* void.

Fourthly, It was said that the *Outlawries* were

1. Against *Francis Goodwyn*, Esq;
2. Against *Francis Goodwyn*, Gent.
and
3. The *Return* was of *Francis Goodwyn*, Kt.

Et quomodo constat, that those *Outlawries* were against the said Sir *Francis Goodwyn*; for these Reasons also they Resolved that the *Outlawries* were not any matter against Sir *Francis Goodwyn* to disenable him to be a *Knight* for the County of *Bucks*.

Fifthly, It was said, That by the *Statute* of 7 *H.* 4. which prescribes the manner of the *Election* of *Knights* and *Burgeses*, it is Enacted, That the *Election* shall be by *Indenture* between the *Sheriff* and the *Freeholders*, &c. that the *Indenture* shall be the *Return* of the *Sheriff*.

It

It was also said, That the *Presidents* do warrant this Judgment, *videlicet*,

1. One *President* of the 39 *H.6.* where a Person *Outlawed* was adjudged a sufficient *Member of Parliament*. Another 1 *Eliz.* and at that time one *Gargrave*, who was a man *learned* in the *Law*, was *Speaker*, and of the *Queens Council*.

2. Another was the Case of one *Fludd* in the 23th of the *Queen*, who, being *Outlawed*, was adjudged that he should be *Priviledged* by *Parliament*, and at that time the Lord Chief Justice *Popham* was *Speaker*. And

3. In the 35th of *Elizabeth*, there were three *Presidents*, *scil.* one of *Fitzberbert*, another of one *Killegrew*, being *Outlawed* in 52 *Outlawries*; and the third of Sir *Walter Harecourt*, being outlawed in eighteen *Outlawries*.

But after this *Sentence* and *Judgment* of the *Parliament*, the King's *Highness* was displeased with it, because the second *Writ emanavit* by his *Assent*, and by the *Advice* of his *Council*.

And therefore it was moved to the *Judges* in the *Upper House*, Whether a Person

son Outlawed could be a *Member* of *Parliament*, who gave their *Opinions* that he could not. And they all, except *Williams*, agreed that the *Pardon* without a *Scire facias* did not help him, but that he was *Outlawed* to that purpose, as if no *Pardon* had been granted.

And upon this the *Lords* sent to the *Lower House*, Desiring a *Conference* with them concerning this Matter; which *Conference* the *Lower House*, after some deliberation, denied for these Reasons:

1. *Because* they had given their *Judgment* before, and therefore they could not have *Conference de re Judicata*; as in like manner they did 27 *Queen Eliz.* upon a *Bill* which came from the *Lords*, and was rejected by *Sentence* upon the first Reading; Sir *Walter Mildmay* being then of the *Privy Council*, and of the *House*.

2. *Because* they ought not to give any *Accompt* of their *Actions* to any other Person, but to the *King* himself.

This *Answer* the *Lords* did ill resent, and therefore refused *Conference* in other Matters concerning *Wards*, and *Respite* of *Homages* and *Purveyors*; and also

they sent to the King to inform him of it: but before their *Messengers* came to the King, two of the *Privy Council*, *scilicet*, Sir John Stanhope, and Sir John Herbert, were sent to the King by the *Lower House*, to inform him that they had heard that his Grace was displeased with the *House* for their *Sentence* given for Sir Francis Goodwyn, as well as in the Matter of the *Sentence*, which was, (as they heard) said to be against *Law*; as also for the manner of their *Proceedings*, being done hastily, without Calling to it either Sir John Partescue, or his *Council*, or without making his Grace acquainted with it.

And therefore they desired his Grace to understand the *Truth* of this *Matter*, and also told him that *They* were ready, with his good leave, with their *Speaker*, to attend his *Majesty* to give him *Satisfaction* about their *Proceedings*.

But the *King* told them they came too late, and that it ought to have been done sooner, calling the *House* *Rash* and *Inconsiderate*; but yet notwithstanding he was content to hear their *Speaker* in the

the Morning at Eight of the Clock.

Upon this Message Committees were chosen to consider of the *Things* and *Matters* aforesaid, which should be delivered to the King in *Satisfaction* of the *Sentence* given by the *House*; which afterwards were consider'd of, and digested by the *Speaker*, and *Committees* in *Three Points*, viz.

1. In the *Reasons* and *Motives* of their *Resolutions*.
2. In the *Presidents*, which were those I before have reported.
3. And in *Matters* of *Law*.

Which were those *Matters* of *Law* also before reported by me; with another Addition.

That in the time of *Henry* the Sixth, the *Speaker* of the *Parliament* was Arrested in *Execution* at the Suit of the *Duke* of *Tork*; and the *Question* being put to the *Judges* at that time, Whether the *Speaker* ought to have his *Priviledge*: It was said by them, *That they were Judges of the Law, and not Judges of Parliament.*

The *Reasons* and *Motives* were the free *Election* of the County, the Request of one of the *House*, the double Return of the *Sheriff*, with a Commemoration of the length of the time since the *Outlawries*, and with that the Payment of the *Debts*.

To this *Report* the *King* answered, That he now ought to *change* his *Tune* which he used in his first *Oration*, *scilicet*, *Thanksgiving*, to *Grief* and *Reproof*. But he said, That it was as necessary they should be *Reproved*, as *Congratulated*; and therefore he cited a parcel of *Scriptures*, wherein God had so done with his *People Israel*, nay, with *King David*, the People whom he tendered as the *Apple* of his *Eye*, and *David*, who was a *Man* after his own *Heart*.

He said, That since *Sir Francis Goodwyn* was received by the *House* upon *Reasons* and *Motives* inducing the *House* thereunto, so the *King* upon *Reason* too, took consideration of *Sir John Fortescue*, being one of the *Council*, an ancient *Counsellor*; a *Counsellor* not chosen by the *King*, but by his *Predecessors*, and so he found

found him; and therefore he endeavoured to grace him, being the only Man of them that had been disgraced; the King protesting that he would not for any thing in the World, offer *unjustly* any *Disgrace* to any Man in the Nation. Besides, he did not proceed Rashly, as they had proceeded, but upon *Deliberation* with *double Advice*, as well with that of his *Council*, as with that of his *Judges*.

And in his Answering the *Presidents*, he said, That those were his own proper *Records*, and to use them against *Himself* was over-great *Weenings*: But in *Presidents*, he said, that they ought to respect *Times* and *Persons*; and therefore said, That *Henry* the Sixth's Time was *troublesome*, he himself *Weak* and *Impotent*. And as for the *other Presidents*, they were in the Time of a *Woman*, which *Sex* was not capable of *Mature Deliberation*; and so he said where *Infants* are *Kings*, whom he called *Minors*.

For the *Law part*, he referred to the Answer of his *Judges*, who by the *Lord Chief Justice* gave these *Resolutions*,
X 3 they

they all unanimously agreeing in *Them*,

1. That the *King alone*, and not the *Parliament House*, had to do with the *Returns* of the *Members* of *Parliament*; for from him the *Writs* issued, and to him the *Sheriff* is commanded to make his *Returns*; but when a Man is *Returned* and *Sworn*, the *Parliament House* hath to do with *Him*, and the *Sheriff* ought to Return the *Outlawry*, if he knew it before his *Return*.

2. They *Resolved* clearly, That an *Outlawed Person* cannot by the *Law* be a *Member* of the *Parliament House*; but for that Cause the *King* might *Refuse* the *Return* of *Him*, and for that Cause he was *removable* out of the *House*. And therefore the *Lord Chief Justice* said, That in the 35th of *Henry the Sixth* it was so *Adjudged* in *Parliament*; which answers the *Presidents* vouched by the *Commons* of that time. And also he said, That in the *first year* of *Henry the Seventh* it was *Adjudged* in *Parliament*, That *Persons Outlawed* or *Attainted* could
not

not sit in *Parliament* without *Restitution* by *Act* of *Parliament*. And he said, That though the *Books* do not warrant his saying, yet the *Parliament Roll* (which he had seen) does warrant it, which any Man might see.

3. They *Resolved* at the *Instance* of the *King Himself*, That the *Party* could not be *Discharged* from the *Outlawry* without a *Scire Facias* sued against the *Party Creditor*, Plaintiff in Debt; and Justice *Windam* for that purpose recanting his former *Opinion*, said, That he upon perusing of his *Books*, and by the *Reasons* of the *Law*, was of *Opinion* with his *Companions*.

4. As for the *Statute* of the 3rd of the *Queen*, concerning *Proclamation* to be made in the County, &c. they all *Resolved* as before times it had been *Resolved*, That no *Outlawry* by that *Statute* was void until *Judgment*; *Declaring*, That here was no *Proclamation* issued forth to the County where the *Party* was *Resiant* at the time of the awarding of the *Exigent*.

5. As for the Statute of 7 Hen. 4. which *Enacts*, That the *Indenture* shall be only the *Return* of the *Sheriff*; the *Judges* said, That was true, that such was the *Statute*, and that that was his *Return* for so much; but that *Statute* doth not restrain the *Sheriff* from *Returning* any other thing *Material* which *Disables* the *Parties* chosen.

6. It was held, That the *Indorsment* of the *Writ*, comprehending the *Matter* of the *Outlawry*, was *Material*, and not a *Nugation*.

7. And lastly, They *Resolved* that by the *Return* of the *Sheriff*, it appeared that Sir *Francis Goodwyn* was the *same Person* who was *Outlawed* 31 Eliz. by the Name of *Francis Goodwyn Esquire*; and 39 Eliz. by the Name of *Francis Goodwyn Gentleman*, and that by the *Words* of the *Return*, *scilicet*, *Idem Franciscus Goodwyn Miles Utlagatus existit, &c.* And They also agreed, That no Person *Outlawed* ought to have his *Priviledge* of the *Parliament House*; and that all the
Pre-

Presidents vouched by the *Commons* were after the Parties were *Members* of the *House*, and not before they were *Returned*.

And notwithstanding their *Resolutions*, *scilicet*, the *Resolution* of the *Judges*, the *Commons House* hold clearly that Sir *Francis Goodwyn* was well Received into *Parliament*; and the *King* commanded them to Confer together, and Resolve if they could of *Themselves*, and if they could not Resolve, to Confer with the *Judges*, and then to *Resolve*, and when they were Resolved, then to deliver their *Resolution* to his *Council*, not as *Parliament men*, but as his *Privy Council*, by whose hands he would receive the *Resolution*; and for that purpose he left them behind him, he himself being to ride to *Royston* a hunting. And to pursue the *Commandment* of the *King*, the *Commons House* clearly *Resolved*, That what they had done, was well and duly done, and they were of *Opinion* clearly against the *Judges*, as to the *Matter* of the *Outlawry*, and that *Ratione* of the *Presidents*: And also that the *Parliament* only had to do with the
Sheriff's

Sheriff's Returns of Members of Parliament, and that the *Returns* ought not to be made till the first day of the *Parliament*, and therefore *They* would not confer with the *Judges*: But they appointed a *Committee* to consider of the *Reasons* to be delivered to the *Council* for the Satisfaction of the *King*; which *Committee* by the Assent of *All the House of Commons*, sent to the *Lords* this *Resolution* following, *videlicet*;

As to what the *King* taxed the *House* for, That they
Note, This Resolution was written in Parchment, and so delivered to the Council of the King, not as Parliament men, but Representing the King's Person, and a Copy thereof was kept in the House.
 medled with the *Sheriff's Return of Members of Parliament*, being but one half of the *Body*, the *Lords* being one, and the *Principal Part* of the *Parliaments Body*.

As to that *They Answered*, That all *Writs* for the *Election* of *Members of Parliament* were returned into the *Parliament House* before 7 *Hen. 4.* (at which time it was *Enacted*, That all such *Returns* ought to be made in *Chancery*,) and that

that appeared by the *Records* from the Time of *Edward* the First, until the said Year of the Seventh of *Henry* the Fourth. And therefore the *Parliament* must of *Necessity* have only meddled with the *Returns* till the making of the said *Statute* of the Seventh of *Henry* the Fourth, at which time the place of the *Return* was alter'd, and Enacted to be in *Chancery*, but yet that did not take away the Jurisdiction of the *Parliament* to meddle with the *Returns* of the *Members* of *Parliament*, but that remained as it was before: And this was manifest as well by Reason as by Use. For that Court is to meddle with *Returns*, where the *Appearance* and *Service* of *Members* is to be made and used; But in the *Parliament* only the *Appearance* and *Service* are to be made and used, and therefore in the *Parliament* only are the *Returns* to be examined and censured.

Likewise ever since the making of the said *Statute* of the Seventh of *Henry* the Fourth, the *Clerk* of the *Crown* attends the *Parliament* every day till the end of it, with all the *Writs* and *Returns*; and at the

the end of the *Parliament*, he brings them into the *Petty Bag*.

The *Presidents* also do warrant this intermeddling with *Returns* for the *Parliament*, as in the Twenty ninth of the *Queen*, a *Writ* issued forth to the *Sheriff* of _____ who made a *Return* before the day into *Chancery*, and the *Chancellour* upon that *Return* containing such matter, as this *Writ* now contains, sent a *second Writ* to the said *Sheriff*, who thereupon made a *new Election*, and that *second Writ* was also *returned*, and both the *Writs* and *Returns* brought into *Parliament*, and there *Censured* by the *Parliament*, That the first should *Stand*, and that the *second Election* was *void*; and that the *Chancellour* hath no *Power* to award a *second Writ*, nor to meddle with the *Return* of it; and divers other *Presidents* were shewn by the *Commons* to the same *Effect*, *videlicet*,

In the Nine and twentieth of *Queen Elizabeth One*.

And in the Three and fortieth of *Queen Elizabeth* another.

And

And in the Thrity fifth of the Queen two.

Whereof one was upon the *Return* of the *Sheriff*, that the *Party* first *elected* was *Lunatick*, and thereupon the *Parliament* examined it, and upon *Examination* thereof they found the *Return* true, and gave a *Warrant* for another *Writ*.

As to the *Matter*, that they were but *One half* of the *Body*; to that they said, *That* though in the making of *Laws* they were but an *Half Body*, yet as to *Censuring* of *Priviledges*, *Customs*, *Orders*, and *Returns* of their *House*, *They* were an *Entire Body*; as the *Upper House* was for their *Priviledges*, *Customs* and *Orders*, which *Continual* and *Common Usage* hath *Approved* of.

As to their *Charge* of having used *Precipitancy* and *Rashness*; they *Answered*, *That* they used it in such a *Manner* as in all *Other Cases* they were wont to do, *scilicet*,

To have first a *Motion* of the *Matter* in *Controversie*, and then they caused the *Clerk* of the *Crown* to bring the second day the *Writs* and *Returns*, and *They* being

being thrice read, they proceed to the *Examination* of them, and upon *Examination* gave *Judgment* which was the true *Proper Course* of the *Place*.

As to the *House's* not having used the *King well*, the thing being done by his *Command*; they say, That they had no *Notice* before their *Sentence*, that the *King* himself took any special *Regard* of that *Case*, but only that his *Officer*, the *Chancellor*, had directed the *second Writ* as formerly had been done.

As to the *Matter* of the *Outlawry*, They said, That they understand by his *Royal Person* more strength and light of *Reason* from it than ever before: and yet it was *without Example*, That any *Member* of the *House* was put out of the *House* for any such *Cause*; but to prevent that, they had prepared a *Law*, That no *Outlawed Person* for the time to come should be of the *Parliament*, nor any *Person* in *Execution* should have the *Priviledge* of *Parliament*.

But

But they said further, That Sir *Francis Goodwyn* was not *Outlawed* at the Day of his *Election*, for he was not *Quinto Exactus*, the five *Proclamations* never had been made, which *Proclamation* they in *London* always spare, except the *Party*, or any for him, require it; and that *Exigent* was never *Returned*, nor any *Writ* of *Certiorari* directed to the *Coroners* to certifie it, but after his *Election*, which was a thing *unusual*, the Money being paid, the *Sheriffs* being long since dead, to *Disenable* the said *Goodwyn* to serve in *Parliament*, that the *Exigent* was *returned*, and the *Names* of the deceased *Sheriffs* put thereto. *Et ex hoc fuit* without doubt that *Goodwyn* could not have a *Scire Facias*, for there was no *Outlawry* against him, and by *Consequence* the *Pardons* had discharged him.

And *They* farther shewed to the *King*, That if the *Chancellour* only could examine *Returns*, then upon every *Surmise*, whether it were *True* or *False*, the *Chancellour* might send a *Second Writ*, and cause a *New Election* to be made; And thus the *Free Election*

tion of the County should be *Abrogated*,
which would be too *Dangerous* to the *Com-*
monwealth.

For by such means the *King* and his
Council might make *Any Man*, whom they
would, to be of the *Parliament House*, a-
gainst the *great Charter* and the *Liber-*
ties of England.

FINIS.



